21

22

23

24

25

26

27

28

1	ALEJANDRO N. MAYORKAS	
_	United States Attorney	
2	LEON W. WEIDMAN	
3	Assistant U.S. Attorney	99 007 - 5 771 4: 11
3	Chief, Civil Division WENDY L. WEISS	
4	Assistant United States Attorney	
7	California Bar Number: 181073	The second secon
5	Room 7516, Federal Building OCT - 8	
	300 North Los Angeles Street	N
6		
	Telephone: (213) 894-0444 NTRAL DISTRICT OF	TCOURT
7	Facsimile: (213) 894-2380 SANTA ANA OF	CALIFORNIA FILED
۰		DEPUTY
8	Attorneys for Plaintiff	
9	United States of America	0CT - 7 1999
	UNITED STATES DISTRICT COURT CLERK, U.S. DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA SANTA ANA OFFICE	
10		
11		
	WESTERN DIVISION DEPUTY	
12		
13		t :
13	UNITED STATES OF AMERICA	
14	ONTED STATES OF AMERICA	
	Plaintiff,	CIVIL NO. SACV 99-1228 GLT (AL)
15)	$(\eta 0)$
	v.	
16)	CONSENT DECREE
17	UNICOR FUNDING, INC.,	
1/	a California corporation	
18)	
10	Defendant.	
19		
20	WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the	
I		

Complaint herein; defendant has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendant admitting liability or fault for any of the matters alleged in the Complaint;

THEREFORE, on the joint motion of plaintiff and defendant, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter and of the parties.

- 2. The Complaint states a claim upon which relief may be granted against the defendant under Sections 5(a)(1), 9, 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 49, 53(b) and 56(a), and under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681u. Entry of this Final Judgment is in the public interest;
- 3. The Commission has the authority under Section 13(b) of the Federal Trade Commission Act and Section 621 of the Fair Credit Reporting Act to seek the relief it has requested;
- 4. The alleged activities of the Defendant are in or affecting commerce, as that term is defined in 15 U.S.C. § 44.

DEFINITIONS

As used in this Consent Decree:

- 1. the Fair Credit Reporting Act or FCRA refers to 15 U.S.C. §§ 1681-1681u, as amended;
- the term "defendant" means Unicor Funding, Inc.
- the term "prescreen" means the process by which consumers are selected to receive offers of credit or insurance using consumer reports to identify individuals meeting criteria set by a creditor or insurer. The prescreen process is covered by Sections 603(l), 604(c), 604(e), and 615(d) of the FCRA, 15 U.S.C. §§ 1681a(l), 1681b(c), 1681b(e), and 1681m(d).

ORDER

I.

IT IS THEREFORE ORDERED that defendant, its successors and assigns, shall pay to plaintiff a civil penalty, pursuant to Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), in the amount of \$100,000. Defendant shall make the payment required by this Order within five (5) days of the date of entry of this Consent Decree by electronic fund transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530. In the event of any default in payment, which default continues for ten days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C.

Consent Decree Page 2 of 7

§ 1961 from the date of default to the date of payment, shall immediately become due and payable.

П.

IT IS FURTHER ORDERED that defendant, its successors and assigns, and its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined, directly or through any corporation, subsidiary, division or other device from:

- 1. using the term "pre-approved" or any similar term to describe an offer of credit in the advertising, marketing, offering, or sale of credit unless the consumer will actually receive the offered credit if he or she responds to the solicitation;
- 2. in situations where the defendant intends to review a consumer's credit history prior to providing credit, failing to clearly and conspicuously disclose in the advertising, marketing, offering, or sale of credit that the credit may be subject to a credit review; and
- 3. making any misrepresentation in connection with the advertising, marketing, offering, or sale of credit.

III.

IT IS FURTHER ORDERED that defendant, its successors and assigns, and its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined, directly or through any corporation, subsidiary, division or other device from:

- failing to provide notice of adverse action to any applicant for credit, where credit has been denied in whole or in part because of information in a consumer report, in accordance with the procedures set forth in Section 615(a) of the FCRA, 15 U.S.C. § 1681m(a);
- 2. failing to provide the information required by Section 615(d) of the FCRA, 15 U.S.C. § 1681m(d), on each written solicitation for credit or insurance when a consumer's name is selected by the process of prescreening; and

Consent Decree Page 3 of 7

3. failing to comply in any other respect with the FCRA, 15 U.S.C. § § 1681-1681u, as amended.

IV.

IT IS FURTHER ORDERED that defendant, its successors and assigns, shall, within thirty (30) days of the entry of this Consent Decree, provide a copy of this Consent Decree and the FCRA to each of defendant's officers and to each employee, agent, servant, or attorney who is involved in the preparation or review of advertising, promotional materials, or any other type of customer solicitation used or expected to be used by the defendant, secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and the FCRA; and, within ten (10) days of complying with this paragraph, file an affidavit with the Court, and serve the Federal Trade Commission, by mailing a copy thereof to the Associate Director for Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, setting forth the fact and manner of their compliance, including the name and title of each person to whom a copy of the Consent Decree has been provided.

V.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Consent Decree, defendant, its successors and assigns, shall maintain and make available to the Federal Trade Commission, within ten (10) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Consent Decree.

VI.

IT IS FURTHER ORDERED that defendant, its successors and assigns, shall notify the Associate Director for Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, at least thirty (30) days prior to any change in defendant's business, including, but not limited to, merger, incorporation, dissolution, assignment, and sale, which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change which may affect defendant's obligations under this judgment.

Consent Decree Page 4 of 7

. .

IT IS FURTHER ORDERED that defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission its taxpayer identifying numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of its relationship with the government.

VIII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further order or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof, or as justice may require.

JUDGMENT IS THEREFORE ENTERED in favor of plaintiff and against defendant, pursuant to all the terms and conditions recited above.

GARY L. TAYLOR

UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat., 847, 863-64 (1996).

FOR THE UNITED STATES OF AMERICA

DAVID W. OGDEN
Acting Assistant Attorney General
Civil Division

U.S. Department of Justice

Consent Decree Page 5 of 7

1	ALEJANDRU N. MAYUKKAS
2	United States Attorney Central District of California
3	LEON W. WEIDMAN
4	Assistant United States Attorney Chief, Civil Division
5	11h. A. 111 a
6	WENDY /L. WEISS
7	Assistant United States Attorney
8	Attorneys for Plaintiff United States of America
9	EUGENE M. THIROLF Director
10	Office of Consumer Litigation
11	1/1
12	Attorney - ELIZABETH STEIN
13	Office of Consumer Litigation Civil Division
14	U.S. Department of Justice Washington, D.C. 20530
15	FOR THE FEDERAL TRADE COMMISSION:
16	Den 1 Miles 1/2
17	David Medine Associate Director for Financial Practices
18	Associate Director for Financial Practices
19	
20	Jessica Rich Assistant Director for Financial Practices
21	luis Ha
22	William Haynes, Attorney
23	Division of Financial Practices Federal Trade Commission
24	Washington, D.C. 20580

FOR THE DEFENDANT UNICOR FUNDING, INC. i By: JOHN E. FRANKHOUSE President Unicor Funding, Inc. Philip L. Schulman Kirkpatrick & Lockhart, LLP 1800 Massachusetts Ave. N.W., 2d Floor Washington, D.C. 20036-1800

REASONS FOR SETTLEMENT

This statement accompanies the Consent Decree executed by defendant Unicor Funding Inc. in settlement of an action brought to recover penalties and other equitable relief from defendant for engaging in acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and the Fair Credit Reporting Act, 15 N.S.C. § 1681 et seq.

Pursuant to Section 5(m)(3) of the Federal Trade Commission Act, as amended (15 U.S.C. § 45(m)(3)), the Commission hereby sets forth its reasons for settlement by entry of a Consent Decree and injunction:

On the basis of the allegations contained in the attached Complaint, the Commission believes that the payment of \$100,000 in civil penalties by the defendant, Unicor Funding Inc., constitutes an appropriate amount upon which to base a settlement. The amount should assure compliance with the law by defendant and others who may be in violation of the Fair Credit Reporting Act. Further, defendant is permanently enjoined from violating The Fair Credit Reporting Act and from misrepresenting its credit products as "pre-approved" in violation of Section 5 of the Federal Trade Commission Act. With the entry of such Consent Decree the time and expense of litigation will be avoided.

For the foregoing reasons, the Commission believes that the settlement by entry of the attached Consent Decree with Unicor Funding Inc. is justified and well within the public interest.

UNICOR FUNDING INC.

I, John E. Frankhouse, do hereby certify that the following is a complete, true and correct copy of certain resolutions of the Board of Directors of Unicor Funding Inc., a corporation duly organized and existing under the laws of the State of California, which resolutions were duly adopted at a duly called meeting of the said Board held on $\frac{\partial /2b/99}{\partial }$, a quorum being present, and are set forth in the minutes of the said meeting; and that the said resolutions have not been rescinded or modified.

RESOLVED, That John E. Frankhouse and Kirkpatrick & Lockhart LLP are authorized to enter into the Consent Decree between the Company and the Federal Trade Commission in the form attached hereto; and

FURTHER RESOLVED, That the officers of the Company be, and they are each hereby, authorized and empowered to execute and deliver such other documents and to do such other acts as they deem appropriate and necessary to effectuate the intent of the preceding resolution.

Secretary Secretary

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said * Corporation, this 26 day of February 1999.

9