

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2015 JUL -1 A 10:38

Consumer Financial Protection Bureau,

Plaintiff,

v.

Intersections Inc.,

Defendant.

CLERK OF DISTRICT COURT
ALEXANDRIA, VIRGINIA

Civil Action No. 1:15cv835

STIPULATED FINAL JUDGMENT AND ORDER

The Consumer Financial Protection Bureau (Bureau) commenced this civil action to obtain injunctive relief, civil penalties, and other relief from Intersections Inc. (Intersections). The Complaint alleges violations of Sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a), 5536(a)(1), for unfair acts or practices related to the billing and administration of Identity Protection Products. The Parties request that the Court enter this Stipulated Final Judgment and Order (Order).

FINDINGS

1. The Court has jurisdiction over the Parties and the subject matter of this action.
2. The Parties agree to the entry of this Order, without adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint to the date this Order is entered.

3. Intersections neither admits nor denies any allegations in the Complaint, except as stated in this Order. For purposes of this Order, Intersections admits the facts necessary to establish the Court’s jurisdiction over it and the subject matter of this action.

4. Intersections waives service under Rule 4(d) of the Federal Rules of Civil Procedure and waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Intersections also waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each party will bear its own costs and expenses, including, without limitation, attorneys’ fees.

5. Entry of this Order is in the public interest.

DEFINITIONS

6. “Affected Consumers” includes any consumer who, during the Relevant Period, enrolled in and paid for Intersections’ Identity Protection Product and who experienced a Service Gap during any portion of his or her enrollment.

7. “Board” means Intersections’ duly-elected and acting Board of Directors.

8. “Effective Date” means the date on which the Order is entered on the docket.

9. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.

10. “Identity Protection Products” means any Intersections product that was sold to customers of its depository institution customers, ancillary to credit or deposit accounts, during the Relevant Period. All “Identity Protection Products” include at least one feature relating to credit reports, identity theft or fraud assistance, or credit monitoring.

11. "Intersections" means Intersections Inc. and any successors and assigns.

12. "Related Consumer Action" means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Intersections based on substantially the same facts as described in the Complaint.

13. "Relevant Period" means the period from January 1, 2009 to February 28, 2013.

14. "Service Gap" refers to a period of time when a consumer, for at least one month, was billed for an Identity Protection Product, but was not delivered full product benefits.

15. "Service Gap End Date" is the date on which the Affected Consumer ceased experiencing the Service Gap.

16. "Service Gap Start Date" is the date on which the Affected Consumer started being billed for the Identity Protection Product despite experiencing a Service Gap.

ORDER

I

Injunctive Relief

IT IS ORDERED under Sections 1053 and 1055 of the CFPA that:

17. Intersections and its officers, agents and employees, whether acting directly or indirectly, may not violate Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, with respect to the billing of, and must not bill, or assist in billing, Identity Protection Product customers for product fees if those customers are experiencing a Service Gap.

18. Intersections must take the following affirmative actions within 30 days of the Effective Date of this Order:

- a. Implement procedures to ensure that only consumers who do not experience a Service Gap are billed for Intersections' Identity Protection Products; and
- b. Implement procedures to ensure that consumers receive all the benefits of Intersections' Identity Protection Products for which they have paid.

II

Monetary Relief

IT IS FURTHER ORDERED that:

19. Within 10 days of the Effective Date, Intersections must reserve or deposit into a segregated deposit account \$55,000 (the "Redress Fund"), which represents the approximate amount of injury caused by the practices described in the Complaint that has not already been refunded to Affected Consumers. To the extent that an Affected Consumer has already received a refund of the amount paid between the Service Gap Start Date and Service Gap End Date due to Identity Protection Product Service Gaps, this Order does not require Intersections to provide duplicative redress to those Affected Consumers.

20. Within 30 days of the Effective Date, Intersections must submit to the Enforcement Director for review and non-objection a comprehensive written plan for providing for payment of the Redress Fund to Affected Consumers who have not already received refunds, consistent with this Order (Redress Plan). The Redress Plan must identify the total number of Affected Consumers who will receive payment of some portion of the Redress Funds, the manner and form in which the Redress Fund will be distributed among Affected Consumers, and the procedures to locate Affected

Consumers whose redress payment is returned as undeliverable. The Enforcement Director will have the discretion to make a determination of non-objection to the Redress Plan or direct Intersections to revise it. If the Enforcement Director directs Intersections to revise the Redress Plan, the Respondent must make the revisions and resubmit the Redress Plan to the Enforcement Director within 15 days. After receiving notification that the Enforcement Director has made a determination of non-objection to the Redress Plan, Intersections must implement and adhere to the steps, deadlines, and timeframes outlined in the Redress Plan.

21. Within 30 days of completing the Redress Plan, Intersections must submit to the Enforcement Director a report with an assessment of its compliance with the terms of the Redress Plan (Redress Plan Report). The Redress Plan Report must:

- a. Describe the methodology used to determine the population of Affected Consumers who received redress under this Order;
- b. State the total number of Affected Consumers to whom Intersections provided redress;
- c. State the total amounts reimbursed to Affected Consumers;
- d. Describe the procedures used to issue and track redress payments; and
- e. Describe the work of independent consultants that Intersections has used, if any, to assist and review its execution of the Redress Plan.

22. After completing the Redress Plan, if the amount of redress provided to Affected Consumers is less than \$55,000, within 30 days of the completion of the Redress Plan, Intersections must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of redress provided to Affected Consumers and \$55,000.

23. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Intersections will have no right to challenge any actions that the Bureau or its representatives may take under this Section.

24. Intersections may not condition the payment of any redress to any Affected Consumer under this Order on that Affected Consumer waiving any right.

III Civil Money Penalties

IT IS FURTHER ORDERED that:

25. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in the Complaint, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Intersections must pay a civil money penalty of \$1,200,000 to the Bureau, as set forth herein.

26. Within 10 days of the Effective Date, Intersections must pay \$400,000 of the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

27. Within 30 days of the Effective Date, Intersections must pay an additional \$400,000 of the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

28. Within 60 days of the Effective Date, Intersections must pay an additional \$400,000 of the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

29. The civil money penalty paid under this Order will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

30. Intersections must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Intersections may not:

- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

31. To preserve the deterrent effect of the civil money penalty, Intersections may not argue in any Related Consumer Action that Intersections is entitled to, nor may Intersections benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset, Intersections must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

IV
Additional Monetary Provisions

IT IS FURTHER ORDERED that:

32. In the event of any default on Intersections' obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

33. Intersections must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Intersections.

34. Under 31 U.S.C. § 7701, Intersections must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

35. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Intersections must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Intersections paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

V

Compliance Plan

IT IS FURTHER ORDERED that:

36. Within 90 days of the Effective Date, Intersections must submit to the Enforcement Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Intersections' practices relating to Identity Protection Products comply with Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, with respect to the billing of, or assistance in billing of, Identity Protection Product customers for products fees, and all of the terms of this Order (Compliance Plan).

37. The Compliance Plan must include, at a minimum:

- a. Detailed steps for addressing each action required by this Order; and
- b. Specific timeframes and deadlines for implementation of the steps described above.

38. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Intersections to revise it. If the Enforcement Director directs Intersections to revise the Compliance Plan, Intersections must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 15 days.

39. After receiving notification that the Enforcement Director has made a determination of non-objection to the Compliance Plan, Intersections must implement and adhere to the steps, deadlines, and timeframes outlined in the Compliance Plan.

VI

Role of the Board

IT IS FURTHER ORDERED that:

40. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Order prior to submission to the Bureau.

41. Although this Order requires Intersections to submit certain documents for the review or non-objection by the Enforcement Director, the Board will have the ultimate responsibility for proper and sound management of Intersections and for ensuring that Intersections complies with Federal consumer financial law and this Order.

42. In each instance that this Order requires the Board to ensure adherence to, or perform certain obligations of Intersections, the Board must:

- a. Authorize whatever actions are necessary for Intersections to fully comply with the Order;
- b. Require timely reporting by management to the Board on the status of compliance obligations; and
- c. Require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

VII

Reporting Requirements

IT IS FURTHER ORDERED that:

43. Intersections must notify the Bureau of any development that may affect compliance obligations arising under this Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence

of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against Intersections; or a change in Intersections' name or address. Intersections must provide this notice at least 30 days before the development or as soon as practicable after learning about the development, whichever is sooner.

44. Within 7 days of the Effective Date, Intersections must designate at least one telephone number and email, physical, and postal addresses as points of contact, which the Bureau may use to communicate with Intersections.

45. Intersections must report any change in the information required to be submitted under Paragraph 43 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

46. Within 90 days of Intersections' receipt of the Bureau's non-objection to the Compliance Plan, and again one year after the submission of the initial Compliance Report, Intersections must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board, which, at a minimum:

- a. Describes in detail the manner and form in which Intersections has complied with this Order; and
- b. Attaches a copy of each Order acknowledgment obtained under Section VIII, unless previously submitted to the Bureau.

47. After the one-year period, Intersections must submit to the Enforcement Director additional Compliance Reports within 14 days of receiving a written request from the Bureau.

VIII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

48. Within 30 days of the Effective Date, Intersections must deliver a copy of this Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Order.

49. For 5 years from the Effective Date, Intersections must deliver a copy of this Order to any business entity resulting from any change in structure referred to in Section VII, any future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Order before they assume their responsibilities.

50. Intersections must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Order under this Section.

IX

Recordkeeping

IT IS FURTHER ORDERED that

51. Intersections must create and maintain, for at least 5 years from the Effective Date, the following business records:

- a. All documents and records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Bureau.

b. For each individual Affected Consumer and his or her enrollment in Intersections' Identity Protection Product: the consumer's name; address; phone number; email address; enrollment date; amount paid for the Identity Protection Product; any refunds provided for the Identity Protection Product; Service Gap Start Date; Service Gap End Date; and the reason why the consumer experienced a Service Gap.

52. Intersections must make the documents identified in Paragraph 51 available to the Bureau upon the Bureau's request.

X
Notices

IT IS FURTHER ORDERED that:

53. Unless otherwise directed in writing by the Bureau, Intersections must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, "*In re* Intersections Inc., No. 2012-0111-02," and send them either:

a. By overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1625 Eye Street, N.W.
Washington D.C. 20006; or

b. By first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XI
Cooperation with the Bureau

IT IS FURTHER ORDERED that:

54. Intersections must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer.

Intersections must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

55. Intersections must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in the Complaint.

Intersections must provide truthful and complete information, evidence, and testimony. Intersections must cause Intersections' officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 15 days written notice, or other reasonable notice, at such places and times as the Bureau may designate, without the service of compulsory process.

XII
Compliance Monitoring

IT IS FURTHER ORDERED that:

56. Within 14 days of receipt of a written request from the Bureau, Intersections must: submit additional compliance reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

57. Intersections must permit Bureau representatives to interview any employee or other person affiliated with Intersections who has agreed to such an interview. The person interviewed may have counsel present.

58. Nothing in this Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6 or otherwise.

XIV

Administrative Provisions

59. The Bureau releases and discharges Intersections from all potential liability for law violations that the Bureau has or might have asserted based upon the practices described in the Complaint and this Order, to the extent that such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Order in future enforcement actions against Intersections and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Order, or to seek penalties for any violations of the Order.

60. This Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Intersections. If such action is dismissed or the relevant adjudicative body rules that Intersections did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate as though the action had never been filed. The Order will remain effective and enforceable until such time, except to the extent that any provisions of this Order have been

amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

XV

Retention of Jurisdiction

61. The Court will retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.


DATED this _____ day of _____, 2015.

United States District Court

Consented and agreed to:

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

DANA J. BOENTE
United States Attorney

By: 
ANTONIA KONKOLY
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3799
Facsimile: (703) 299-3983
E-Mail: Antonia.Konkoly@usdoj.gov

FOR THE CONSUMER FINANCIAL PROTECTION BUREAU:

Anthony Alexis
Enforcement Director

Deborah Morris
Deputy Enforcement Director

Michael G. Salemi
Assistant Litigation Deputy

Alusheyi J. Wheeler, (pro hac vice)
Brandis Anderson, (pro hac vice)
Enforcement Attorneys
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
Email: Alusheyi.Wheeler@cfpb.gov
Email: Brandis.Anderson@cfpb.gov
Telephone: 202-435-7786
Facsimile: 202-435-7722

Attorneys for Plaintiff
Consumer Financial Protection Bureau

FOR INTERSECTIONS, INC.:

Toni Kuczyński, AVSA w/ per mission fax:

Mercedes K. Tunstall
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW
Washington, DC 20036
Email: Mercedes.Tunstall@pillsburylaw.com
Telephone: 202-663-8118
Facsimile: 202-663-8007

Christopher J. Willis
Ballard Spahr LLP
999 Peachtree Street, Suite 1000
Atlanta, GA 30309
Email: WillisC@ballardspahr.com
Telephone: 678-420-9436
Facsimile: 678-420-9301

*Attorneys for Defendant
Intersections, Inc.*