

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Consumer Financial Protection
Bureau,

Plaintiff,

v.

Affinion Group Holdings, Inc.,
Affinion Group Inc., Affinion Group,
LLC, Affinion Benefits Group, LLC,
Trilegiant Corporation, Watchguard
Registration Services, Inc., and
Global Protection Solutions, LLC,

Defendants.

Case No. 15-cv-01005

**STIPULATED FINAL JUDGMENT
AND ORDER**

STIPULATED FINAL JUDGMENT AND ORDER

Plaintiff, the Consumer Financial Protection Bureau (“Bureau”) commenced this civil action against Defendants Affinion Group Holdings, Inc., Affinion Group, Inc., Affinion Group, LLC, Affinion Benefits Group, LLC, Trilegiant Corporation, Watchguard Registration Services, Inc., and Global Protection Solutions, LLC (collectively, “Defendants”) on July 1, 2015, to obtain injunctive relief, redress, and civil money penalties.

The Complaint alleges violations of §§ 1031(a) and 1036(a)(1) of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a)(1).

Plaintiff and Defendants request that the Court enter this Stipulated Final Judgment and Order (“Order”).

FINDINGS

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Plaintiff and Defendants agree to entry of this Order, without adjudication of any issue of fact or law, to settle and resolve all matters in this dispute arising from the conduct alleged in the Complaint to the date this Order is entered.
3. Defendants neither admit nor deny any allegation in the Complaint, except as stated in this Order. For purposes of this Order, Defendants admit the facts necessary to establish the Court’s jurisdiction over Defendants and the subject matter of this action.
4. Defendants waive service under Rule 4(d) of the Federal Rules of Civil Procedure and waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants also waive any claim they 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. The following definitions apply to this Order:
 - a. "**Affected Consumer**" means a consumer that enrolled in a Specified Protection Product between July 2, 2010 and August 20, 2012.
 - b. "**Board**" means each of the Defendants' duly-elected and acting Boards of Directors.
 - c. "**Defendants**" means Affinion Group Holdings, Inc., Affinion Group, Inc., Affinion Group, LLC, Affinion Benefits Group, LLC, Trilegiant Corporation, Watchguard Registration Services, Inc., and Global Protection Solutions, LLC and any successors or assigns.
 - d. "**Effective Date**" means the date on which the Order is entered on the docket.
 - e. "**Enforcement Director**" means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his delegate.
 - f. "**Financial Institution**" means an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; any credit union; a thrift institution; an issuer,

redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments; an operator of a credit card system; a loan or finance company; or any business or agency which engages in activity which is similar to, related or a substitution for activity in which any business described in this is authorized to engage.

g. **"Protection Product"** means a consumer financial product or service, as defined by § 1002(5) of the CFPA, 12 U.S.C. § 5481(5), that includes at least one feature relating to credit reports, credit monitoring, credit scores, or identity fraud assistance, and was sold to the customers of a Financial Institution, and serviced directly or indirectly by the Defendants.

h. **"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 Defendant based on substantially the same facts as described in this Order or the Complaint.

i. **"Relevant Period"** means July 2, 2010 until August 20, 2012.

j. **"Specified Protection Product"** means a Protection Product identified in ¶ 17 of the Complaint.

ORDER

IT IS ORDERED that:

I. Conduct Prohibition

7. Under §§ 1053 and 1055 of the CFPA, Defendants and its officers, agents, servants, employees, and attorneys who have actual notice of this Order, whether acting directly or indirectly, may not violate §§ 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536.

8. Defendants must take reasonable measures to ensure that Defendants and service providers, affiliates, and other agents of Defendants do not violate §§ 1031 and 1036 of the CFPA 12 U.S.C. §§ 5531 and 5536, regarding the billing and administration of Protection Products.

9. Defendants may not make, or allow to be made, any material deceptive representation, statement, or omission, expressly or by implication, in connection with the marketing, solicitation, or administration of any Protection Product or during membership retention for such products.

10. Defendants must correct all alleged violations of law, as described in the Complaint and addressed in this Order and implement procedures to prevent their recurrence.

11. If a customer enrolled in a Protection Product as of the Effective Date contacts Defendants and requests to cancel the customer's

membership in a Protection Product, Defendants will immediately cancel the Protection Product and will not make any rebuttal or other attempt to persuade the customer to retain the Protection Product.

12. Defendants will immediately begin efforts to comply with this Section, but detailed steps for fully addressing the restrictions and requirements of this Section, and specific timeframes and deadlines for implementing the restrictions and requirements of this Section will be set forth in the Compliance Plan described in § II.

II. Compliance Plan

13. Within 90 days of the Effective Date, Defendants must submit to the Enforcement Director for review and determination of nonobjection a comprehensive compliance plan designed to ensure that Defendants' practices that relate to Protection Products complies with all applicable Federal consumer financial laws and the terms of this Order ("Compliance Plan"). 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.

14. The Enforcement Director will have the discretion to make a determination of nonobjection to the Compliance Plan or direct the

Defendants to revise it. If the Enforcement Director directs the Defendants to revise the Compliance Plan, the Defendants must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 45 days.

15. After receiving notification that the Enforcement Director has made a determination of nonobjection to the Compliance Plan, the Defendants must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

III. Role of the Board

16. The Board must review all submissions required by this Order before the materials are submitted to the Bureau.

17. Although this Order requires the Defendants to submit certain documents for the review or nonobjection by the Enforcement Director, the Board will have the ultimate responsibility for proper and sound management of Defendants and for ensuring that Defendants comply with Federal consumer financial law and this Order.

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

- a. Authorize whatever actions are necessary for Defendants 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 noncompliance with any failures to comply with Board directives related to this Section.

19. The Board may delegate all obligations in § III to a Compliance Committee comprised of at least three or more Board members, of which a majority may not be employees or officers of the Defendants or any of their subsidiaries.

IV. Monetary Provisions

20. Within 10 days of the Effective Date, Defendants must reserve \$6,756,025 for the purpose of providing restitution to Affected Consumers.

21. Within 90 days of the Effective Date, Defendants must submit to the Enforcement Director for review and nonobjection a comprehensive written plan for providing redress consistent with this Order (“Redress Plan”). The Enforcement Director will have the discretion to make a determination of nonobjection to the Redress Plan or direct the Defendants to revise it. If the Enforcement Director directs the Defendants to revise the Redress Plan, the Defendants must make the revisions and resubmit the Redress Plan to the Enforcement Director within 30 days. After receiving notification that the Enforcement Director has made a determination of nonobjection to the Redress Plan, the Defendants must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.

22. Redress will be paid to Affected Consumers who were billed for the Specified Protection Products and did not receive credit monitoring or credit report retrieval services because of a lack of authorization or service delivery issues. Defendants will refund the full amount of fees paid by the Affected Consumer while the Affected Consumer did not receive full credit monitoring or credit report retrieval services. Redress will not be provided to Affected Consumers if it is not possible to determine the specific cause of any temporary nonreceipt of credit monitoring or credit report retrieval services. In addition, an Affected Consumer will be deemed to have received benefits if such benefits could be accessed online or web-enabled, or if partial monitoring was received and the Affected Consumer was notified of the partial receipt.

23. After completing the Redress Plan, if the amount of redress provided to Affected Consumers is less than \$6,756,025, within 90 days of the completion of the Redress Plan, Defendants 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 \$6,756,025.

24. Within 90 days of completing the Redress Plan, Defendants will submit to the Enforcement Director a report with an assessment of its compliance with the terms of the Redress Plan ("Redress Report"). The Redress Report will:

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

25. If the Bureau determines, in its sole discretion, that further redress to consumers is wholly or partially impracticable, or if funds remain after additional redress is completed, those remaining funds will be deposited in the U.S. Treasury as disgorgement. The Defendants will have no right to challenge any actions that the Bureau or their representatives may take under this Paragraph.

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

27. For any Affected Consumer that receives redress as a credit that decreases the existing balance or charged-off balance, Defendants must, as permitted by law, report the updated balance to each credit bureau to which Defendants had previously furnished balance information for the account or delete the account tradeline if the updated balance is zero dollars or less.

V. Civil Money Penalties

28. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the alleged violations of law described in the Complaint, and taking into account the factors in 12 U.S.C. § 5565(c)(3), a judgment for a civil money penalty is entered in favor of the Bureau and against Defendants, jointly and severally, in the amount of \$1,900,000.

29. Within 20 days of the Effective Date, Defendants must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

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

31. Defendants 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, Defendants 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.

32. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Defendants may not argue that Defendants are entitled to, nor may Defendants 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, Defendants must, within 90 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.

VI. Additional Monetary Provisions

33. In the event of any default on Defendants’ obligation 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.

34. Defendants must relinquish all dominion, control, and title to the funds paid or to be paid under this Order to the fullest extent permitted by law and no part of the funds may be returned to Defendants.

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

36. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Defendants 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 Defendants paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

VII. Reporting Requirements

37. Defendants 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 Defendants; or a change in Defendants' name or address. Defendants must provide this notice at least 30 days before the development or as soon as practicable after the learning about the development, whichever is sooner.

38. Within 30 days of the Effective Date, Defendants must:

- a. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Defendants;
- b. Identify all businesses for which any Defendant is the majority owner, or that a Defendant directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
- c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.

39. Defendants must report any change in the information required to be submitted under ¶ 37 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

40. Within 120 days of the Effective Date, and again one year after the Effective Date, Defendants must submit to the Enforcement Director an

accurate written compliance progress report that has been approved by the Board, which, at a minimum:

- a. Describes in detail the manner and form in which Defendants have complied with this Order; and
- b. Attaches a copy of each Order Acknowledgment obtained under § VIII, unless previously submitted to the Bureau.

VIII. Order Distribution and Acknowledgment

41. Within 90 days of the Effective Date, Defendants must deliver a copy of this Order to each of its Board members and executive officers, as well as to any managers, or service providers who have responsibilities related to Protection Products. Defendants must deliver a copy of this Order or a summary of this Order, as to which the Enforcement Director has made a determination of nonobjection, to employees or other agents and representatives who have responsibilities related to Protection Products.

42. For 5 years from the Effective Date, Defendants must deliver a copy of this Order to any business entity resulting from any change in structure referred to in § VII, any future Board members and executive officers, as well as to any managers and service providers, who will have responsibilities related to Protection Products before they assume their responsibilities. Defendants must deliver a copy of this Order or a summary of this Order (as described in ¶ 41), to employees of any business entity

resulting from any change in structure referred to in § VII, or other agents and representatives of such an entity, who will have responsibilities related to Protection Products.

43. Defendants must secure a signed and dated statement acknowledging receipt of a copy or the summary of this Order described in ¶ 41, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 90 days of delivery, from all persons receiving a copy or summary of this Order under this Section.

IX. Recordkeeping

44. Defendants must maintain for at least 5 years from the Effective Date all documents and records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Bureau.

45. Defendants must retain the documents related to the compliance report described in ¶ 44 for at least 5 years.

46. Defendants must make the documents identified in ¶ 44 available to the Bureau upon the Bureau's request.

X. Notices

47. Unless otherwise directed in writing by the Bureau, Defendants must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, “*In re Affinion Group Holdings, Inc.* Matter No. 2012-0110-02” and send them to:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTN: Office of Enforcement
1700 G Street, NW
Washington, DC 20552

Enforcement_Compliance@cfpb.gov

XI. Cooperation with the Bureau

48. Defendants must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Defendants must provide such information in its or its agents' possession or control within 30 days of receiving a written request from the Bureau.

49. Defendants must cooperate fully with the Bureau in this matter and in any investigation related to or associated with the conduct described in the Complaint. Defendants must provide to the Bureau truthful and complete information, evidence, and testimony. Defendants must appear for interviews, discovery, hearings, trials, and any other proceedings that the Bureau may reasonably request upon 10 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

50. Within 30 days of receipt of a written request from the Bureau, Defendants must submit compliance reports or other requested

information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

51. Defendants must permit Bureau representatives to interview any employee or other person affiliated with Defendants who have agreed to such an interview regarding the subject matter or compliance of this Order. The person interviewed may have counsel present.

52. Nothing in this Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XIII. Retention of Jurisdiction

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

54. Notwithstanding the provisions of ¶ 53, any time limits for performance fixed by this Order may be extended by mutual written agreement of the parties and without further Court approval. Additionally, details related to administration of §§ VII through XII of this Order may be modified by written agreement of the parties and without further Court approval. Any other modifications to this Order may be made only upon approval of the Court, upon motion by any party.

XIV. Release

55. The Bureau releases and discharges Defendants from all potential liability for law violations that the Bureau has or might have

asserted based on the practices alleged in the Complaint, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices alleged in the Complaint in future enforcement actions against Defendant or its affiliates 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 this Order, or to seek penalties for any violations of this Order.

IT IS SO ORDERED.

DATED this 27th day of October, 2015.

/s/ Victor A. Bolden
United States District Court Judge