

Complaint

IN THE MATTER OF

**FILIQUARIAN PUBLISHING, LLC;
CHOICE LEVEL, LLC; AND JOSHUA LINSK**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 604 AND 607 OF THE FAIR CREDIT REPORTING ACT AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4401; File No. 112 3195
Complaint, April 30, 2013 – Decision, April 30, 2013*

This consent order relates to Filiquarian Publishing, LLC, Choice Level, LLC, and their owner and sole officer, Joshua Linsk (collectively “respondents”), who developed and marketed a mobile application that allowed customers to conduct an unlimited number of searches for criminal records within a particular state or county. Respondents advertised that customers could use its mobile apps to screen employees or conduct credit screenings. At the same time, however, respondents issued a disclaimer stating its mobile application was not compliant with the Federal Credit Reporting Act (FCRA) and that anyone using their mobile application for employment or credit screening purposes assumed sole responsibility for FCRA compliance. The complaint alleges that respondents failed to adhere to three key requirements of the Fair Credit Reporting Act (FCRA) (1) to maintain reasonable procedures for verifying user identity and that the information would be used for a permissible purpose; (2) to ensure that the information they provided in consumer reports was accurate; and (3) to provide adequate notice to users and to those who furnished respondents with information that was included in consumer reports. The complaint further alleges respondents’ disclaimers are insufficient to circumvent FCRA liability because the company expressly advertised that its reports could be used for employment purposes. The order requires respondents to comply with the relevant provisions of the FCRA, retain documents relating to their compliance with the order for a five year period.

Participants

For the *Commission*: *Jessica Lyon and Anthony Rodriguez.*

For the *Respondent*: *Andrea Delgadillo Ostrovsky, Calfo, Harrigan, Leyh, and Eakes.*

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The Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Filiquarian Publishing, LLC, Choice Level, LLC, and Joshua Linsk, individually, and as an officer of

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the companies, have violated the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq., and Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Filiquarian Publishing, LLC (“Filiquarian”) is a Minnesota company with its principal office or place of business at 3722 Las Vegas Boulevard S. #2807E, Las Vegas, NV 89158.

2. Respondent Choice Level, LLC (“Choice Level”) is a Minnesota company with its principal office or place of business at 3722 Las Vegas Boulevard S. #2807E, Las Vegas, NV 89158.

3. Respondent Joshua Linsk is the owner and sole officer of the corporate respondents. During all times material to this complaint, Joshua Linsk, individually or in concert with others, formulated, directed, or controlled the policies, acts, or practices of the companies. His principal office or place of business is the same as that of Filiquarian and Choice Level.

4. The acts and practices of respondents as 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.

RESPONDENTS’ BUSINESS PRACTICES

5. Since at least 2010, respondent Filiquarian has operated a series of mobile applications (“apps”) that it advertised consumers could use to conduct a “quick criminal background check for convictions” in specific states. Mobile apps offered by respondent Filiquarian include Alaska Criminal Records Search, Arizona Criminal Records Search, Arkansas Criminal Records Search, Connecticut Criminal Records Search, Indiana Criminal Records Search, Iowa Criminal Records Search, Minnesota Criminal Records Search, Orange County Criminal Records Search, Texas Criminal Records Search, Utah Criminal Records Search, Virginia Criminal Records Search, and Wisconsin Criminal Records Search.

6. Respondent Filiquarian represented that the apps could access hundreds of thousands of criminal records, and that users

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could conduct a search on potential employees. For example, respondent Filiquarian's mobile app, Texas Criminal Record Search, included the following representation:

"Are you hiring somebody and wanting to quickly find out if they have a record? Then Texas Criminal Record Search is the perfect application for you."

Respondent Filiquarian's mobile apps for other states included identical language, other than the name of the app.

7. Since at least 2010, respondent Filiquarian distributed and sold its mobile apps through two online stores, iTunes and Google Android store, now GooglePlay. Consumers were charged \$0.99 to download the app. After downloading the app, users could conduct an unlimited number of searches for criminal record reports within a specific geographic location such as a state or county.

8. As of May 2012, respondent Filiquarian sold at least 6,879 copies of its mobile apps offering criminal record reports.

9. Respondent Choice Level provided the criminal records to respondent Filiquarian that were accessed by Filiquarian's mobile apps. In light of the common ownership and control of respondents Choice Level and Filiquarian, and respondent Filiquarian's representations that its mobile apps could be used to access criminal records for hiring purposes, respondent Choice Level was aware that the criminal records it provided would be used for employment purposes.

10. Both respondents Filiquarian and Choice Level included a disclaimer in their "terms and conditions" stating that their respective products were not to be considered screening products for insurance, employment, loans, and credit applications, among other things. Respondents' disclaimer also stated that respondents were not compliant with the FCRA and any person using respondents' information for FCRA purposes "assumes sole responsibility for compliance with the Fair Credit Reporting Act and all/any other applicable laws."

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APPLICATION OF THE FCRA

11. Under Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f), a company is a consumer reporting agency (“CRA”) if it assembles or evaluates information on consumers for the purpose of furnishing “consumer reports” to third parties. According to Section 603(d) of the FCRA, 15 U.S.C. § 1681a(d)(1), consumer reports are communications that include information relating to an individual’s character, reputation, or personal characteristics and are used or expected to be used for employment, housing, credit, or other similar purposes.

12. Respondents regularly assembled criminal records into reports that they provided to third parties in interstate commerce via mobile apps distributed by respondent Filiquarian. Despite the disclaimer discussed in Paragraph 10, respondent Filiquarian’s mobile apps advertised that their reports, which were assembled from criminal records provided by Choice Level, could be used by customers for employment purposes, thus reflecting that respondents expected their reports to be used for employment purposes. Such reports are consumer reports as defined by the FCRA because they bear on a consumer’s character, general reputation, personal characteristics, or mode of living and/or other attributes listed in Section 603(d) of the FCRA, 15 U.S.C. § 1681a(d)(1) and they were “used or expected to be used . . . in whole or in part” as a factor in determining a consumer’s eligibility for employment.

13. In providing “consumer reports” respondents are now and have been a “consumer reporting agency” as that term is defined in Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f).

VIOLATIONS OF THE FCRA

14. Respondents did not comply with or maintain any procedures related to the FCRA, as described below.

15. Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a), prohibits a CRA from furnishing consumer reports to persons who the consumer reporting agency does not have a reason to believe have a “permissible purpose.” According to Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a), permissible purposes include use in

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credit transactions, insurance underwriting, employment purposes, investment purposes, and other uses specified in the FCRA.

16. Respondents have regularly furnished consumer reports to third parties without procedures to inquire into the purpose for which the user is buying the report. Thus, respondents have violated Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a).

17. Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a), requires every CRA to maintain reasonable procedures to limit the furnishing of consumer reports for permissible purposes. These procedures require that the CRA, prior to furnishing a user with a consumer report, require the prospective users of the information to identify themselves to the CRA, certify the purpose for which the information is sought, and certify that the information will be used for no other purpose. The CRA must make a reasonable effort to verify the identity of each new prospective user and the uses certified prior to furnishing such user a consumer report. In addition, Section 607(a) prohibits a CRA from furnishing a consumer report to any person it has reasonable grounds to believe will not use the consumer report for a permissible purpose.

18. Respondents failed to maintain reasonable procedures to limit the furnishing of consumer reports for permissible purposes. For example, respondents failed to require that prospective users of their reports identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. By failing to limit the furnishing of reports to those who had a permissible purpose to use such a report, respondents have violated Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a).

19. Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b), requires CRAs to follow reasonable procedures to assure maximum possible accuracy of information concerning the individual about whom the report relates.

20. Respondents maintained no procedures to assure maximum possible accuracy of information in the reports it

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provided. Accordingly, respondents have violated Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b).

21. Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), requires CRAs to provide notices to all users of respondents' consumer reports; and to all persons who regularly furnish consumer report information to respondents.

22. Respondents failed to provide such notices. Accordingly, respondents have violated Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d).

23. By their violations of Sections 604(a), 607(a), 607(b), and 607(d) of the FCRA, 15 U.S.C. §§ 1681b(a), 1681e(a), 1681e(b), and 1681e(d), and pursuant to Section 621(a) thereof, 15 U.S.C. § 1681s, respondents have engaged in unfair and deceptive acts and practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this thirtieth day of April, 2013, has issued this complaint against respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq*; and the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq*.; and

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The Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by Respondents that they neither admit nor deny any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admit the facts necessary to establish jurisdiction; and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondents have violated the Federal Trade Commission Act, and the Fair Credit Reporting Act and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons, now in further conformity with the procedure described in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and enters the following Order:

1. Respondent Filiquarian Publishing, LLC (“Filiquarian”) is a Minnesota company with its principal office or place of business at 3722 Las Vegas Boulevard S. #2807E, Las Vegas, NV 89158.
2. Respondent Choice Level, LLC (“Choice Level”) is a Minnesota company with its principal office or place of business at 3722 Las Vegas Boulevard S. #2807E, Las Vegas, NV 89158.
3. Respondent Joshua Linsk is an officer of the corporate respondents. During all times material to this complaint, Joshua Linsk, individually or in concert with others, formulated, directed, or controlled the policies, acts, or practices of the companies. His principal office or place of business is the same as that of Filiquarian and Choice Level.

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4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “respondents” shall mean Filiquarian Publishing, LLC, a corporation; Choice Level, LLC, a corporation; their successors and assigns, and officers; Joshua Linsk, individually and as an officer of the corporations; and each of the above’s agents, representatives, and employees.
2. The definitions set forth in the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681a, *et seq.*, shall apply.
3. “Clear and prominent” shall mean:
 - i. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are unavoidable and of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;
 - ii. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - iii. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form

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consistent with subparagraph (i) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication; and

- iv. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.
- 4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
- 5. “Permissible purpose” shall mean the circumstances under which a consumer report may be furnished as described in Section 604 of the FCRA, 15 U.S.C. § 1681b.

I.

IT IS ORDERED that respondents, whether acting directly or through any sole proprietorship, partnership, limited liability company, corporation, subsidiary, branch, division, or other business entity, in connection with the compilation, creation, sale, or dissemination of any consumer report, are hereby prohibited from:

- A. Furnishing a consumer report to any person which respondents do not have reason to believe has a permissible purpose under Section 604(a) of the FCRA, 15 U.S.C. § 1681b(a);
- B. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under Section 604(c) of the FCRA, 15 U.S.C. § 1681b(a), as set forth in Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a);

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- C. Failing to maintain reasonable procedures to assure the maximum possible accuracy of the information concerning the individual about whom a consumer report relates, as required by Section 607(b) of the FCRA, 15 U.S.C. § 1681e(b);
- D. Failing to provide the “Notice to Users of Consumer Reports: Obligations of Users Under the FCRA” (“User Notice”) required by Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), to all users of respondents’ consumer reports. *Provided, however,* that respondents may provide an electronic copy of the User Notice to a user if: (a) in the ordinary course of business, the user obtains consumer report information from respondents in electronic form, and (b) the notice is clear and prominent; and
- E. Failing to provide the Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA (“Furnisher Notice”) required by Section 607(d) of the FCRA, 15 U.S.C. § 1681e(d), to all furnishers of consumer report information to respondents. *Provided, however,* that respondents may provide an electronic copy of this notice to a furnisher if: (a) in the ordinary course of business, the furnisher provides consumer report information to respondents in electronic form, and (b) the notice is clear and prominent.

II.

IT IS FURTHER ORDERED that, for five (5) years after the date of issuance of this order, respondents, and their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating compliance with the terms and provisions of this order, including but not limited to:

- A. Files containing the names, addresses, telephone numbers, and all certifications made by persons seeking to obtain consumer reports, including but not limited to reports containing criminal record

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information, from respondents, and all materials considered by respondents in connection with their verification of the identity of those persons and verification of the certifications made by those persons;

- B. Copies of all training materials and marketing materials that relate to respondents' provision of consumer reports as alleged in the complaint and respondents' compliance with the provisions of this order; and
- C. All records necessary to demonstrate full compliance with each provision of this order, including all submissions to the Commission.

III.

IT IS FURTHER ORDERED that, for five (5) years after the date of issuance of this order, respondents, and their successors and assigns, shall deliver a copy of this order to: (1) all current and future principals, officers, and directors; and (2) all current and future managers, employees, agents and representatives who have responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondents and their successors and assigns shall notify the Commission at least thirty (30) days prior to any change in a respondent 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

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creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in a respondent's name or address. *Provided, however*, that with respect to any proposed change about which a respondent learns less than thirty (30) days prior to the date such action is to take place, the respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Filiquarian Publishing, LLC, FTC File Number 1123195. *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

V.

IT IS FURTHER ORDERED that respondents and their successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondents have complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondents shall submit additional true and accurate written reports.

VI.

This order will terminate on April 30, 2033, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;

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- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondents 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 according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Filiquarian Publishing, LLC; Choice Level, LLC; and Joshua Linsk, individually, and as an officer of the companies.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The Commission's proposed administrative complaint alleges that the companies were operating as consumer reporting agencies

Analysis to Aid Public Comment

without any procedures or policies in place to comply with the Fair Credit Reporting Act (“FCRA”).

The respondents sold background screening reports containing criminal records through mobile applications (“apps”) available in the iTunes and Google Android store (now GooglePlay) and through a website. Filiquarian developed and marketed apps that sold for \$0.99 each and allowed purchasers to conduct unlimited searches of criminal history information within a specific geographic area, such as a state or county. Each app included an express representation that purchasers could use the reports for employment purposes. Choice Level provided the underlying records accessed by purchasers of the Filiquarian apps. Joshua Linsk is the owner and sole officer of Filiquarian and Choice Level. During all times material to this complaint, Linsk, individually or in concert with others, formulated, directed, or controlled the policies, acts, or practices of the companies.

According to the complaint, despite Filiquarian clearly promoting its background reports for use in employment screening, both Filiquarian and Choice Level included disclaimers in their terms and conditions stating that their reports were not to be considered a screening product for insurance, employment, or credit, and that they were not compliant with the FCRA. Such disclaimers contradicted and failed to counteract the express representations made in Filiquarian’s advertising, urging the use of the reports to screen potential employees. Marketing and selling background screening reports to potential employers without implementing any of the accuracy or dispute safeguards required by the FCRA potentially exposes a large number of consumers to harm to their reputations and employment prospects.

The complaint alleges that the reports produced by respondents were consumer reports under the FCRA and that respondents lacked any policies or procedures to comply with the FCRA. Specifically, the complaint alleges that respondents failed to adhere to three key requirements of the FCRA: to maintain reasonable procedures to verify who their users are and that the information would be used for a permissible purpose; to ensure that the information they provided in consumer reports was accurate; and to provide notices to users and to those who furnished proposed respondents with information that was

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included in consumer reports. The complaint further alleges that by their violations of the FCRA, as stated above, proposed respondents have engaged in unfair and deceptive acts and practices, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

The proposed consent order contains provisions designed to prevent the respondents from engaging in the future in practices similar to those alleged in the complaint.

Part I of the order includes injunctive relief requiring respondents to comply with the relevant provisions of the FCRA. Parts II through VI are reporting and compliance provisions. Part II requires respondents to retain documents relating to their compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that respondents submit a compliance report to the FTC within 60 days, and periodically thereafter as requested. Part VI is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

**PRÁXEDES E. ALVAREZ SANTIAGO, M.D.,
DANIEL PÉREZ BRISEBOIS, M.D.,
JORGE GRILLASCA PALAU, M.D.,
RAFAEL GARCÍA NIEVES, M.D.,
FRANCIS M. VÁZQUEZ ROURA, M.D.,
ANGEL B. RIVERA SANTOS, M.D.,
COSME D. SANTOS TORRES, M.D., AND
JUAN L. VILARÓ CHARDÓN, M.D.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4402; File No. 121 0098
Complaint, May 1, 2013 – Decision, May 1, 2013*

This consent order relates to eight physicians located in southwestern Puerto Rico which provide nephrology services for commercial, Medicare and Medicaid patients through contracts with various payers. The Medicaid program in Puerto Rico, Mi Salud, is administered by Administración de Seguros de Salud (ASES), a public corporation that is charged with ensuring that Puerto Rico residents have access to full medical services, including the kidney treatments that respondents provide. ASES contracts with two health plans, Humana Health plans and Triple-S. The complaint alleges that respondents jointly terminated their contracts with Humana and refused to treat patients enrolled in Mi Salud in an effort to extract higher reimbursements rates. The order bars respondents from collectively refusing to treat patients and requires the physicians to notify the Federal Trade Commission before entering into certain joint arrangements.

Participants

For the *Commission*: Linda Blumenreich, Garry Gibbs, Melea Greenfeld, and Tim Slattery.

For the *Respondents*: Carlos A. Del Valle Cruz.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission