

B. This Order is for settlement purposes only and neither its execution by the parties nor its entry by the Court constitutes an admission by TRW that any law has been violated as alleged by the States, or that the facts alleged by the States are true. In fact, while TRW believes that the entry of this Order is in its interest, TRW specifically denies the States' allegations and denies that it has violated any law as alleged by the States or otherwise. Moreover, nothing in this Order shall be interpreted as constituting any fine or penalty against TRW. Nor does the States' execution of this Order constitute an approval by the States of any of TRW's past or future practices. No party shall make any representation contrary to the provisions of this paragraph.

C. For purposes of this Order, the following definitions shall apply:

1. The Fair Credit Reporting Act ("FCRA") refers to 15 U.S.C. §§ 1681–1681t, as amended or as it may hereinafter be amended.
2. The terms, "Person," "Consumer," "Consumer Report," "Consumer Reporting Agency," "File," and "Employment Purposes" are defined as set forth in §§ 603(b), (c), (d), (f), (g), and (h), respectively, of the FCRA, 15 U.S.C. §§ 1681a(b), 1681a(c), 1681a(d), 1681a(f), 1681a(g), and 1681a(h).
3. "B2/B3 Segments of the Metro Consumer Reporting Format" means credit information reported in twelve-month or twenty-four-month segments.
4. "Credit Information" means the information TRW maintains bearing on any of the characteristics listed in § 603(d) of the FCRA with respect to any Consumer which TRW obtains from Subscribers, court records or any other source and from which TRW creates Consumer Reports.
5. "Full Identifying Information" means full last and first name; middle initial; full street address; zip code; year of birth; any generational designation; and social security number.
6. "Mixed File" refers to a Consumer Report in which some or all of the information pertains to a person or persons other than the person who is the subject of the Consumer Report.
7. "Prescreening" means the process whereby TRW, utilizing Credit Information, compiles or edits for a client a list of Consumers who meet specific criteria and provides this list to the client or a third party (such as a mailing service) on behalf of the client for use in soliciting those Consumers for an offer of credit.
8. "Serious Derogatory Information" means information indicating a bankruptcy adjustment plan, bankruptcy, liquidation, reorganization, charge off, collection account, charge off now paying, deed in lieu, foreclosed, foreclosure proceedings, government claim, insurance claim, paid by dealer, paid charge off, paid collection account, paid foreclosure, paid repossession, repossession, or subscriber cannot locate.
9. "States" means Alabama, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Louisiana, Michigan, Missouri, Nevada, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, Rhode Island and Texas.
10. "Subscriber" means any person who furnishes Credit Information to TRW or who requests or obtains a Consumer Report from TRW, excluding Consumers.
11. "TRW" means TRW Inc., its successors and assigns, and its officers, agents, representatives, and employees directly or through any corporation, subsidiary, division or other device.

H.1.3 TRW Inc. [now Experian] v. Morales⁵

United States District Court
for the Northern District of Texas

| | | |
|-------------------------|---|-------------------|
| _____ |) | |
| TRW Inc., |) | |
| |) | Plaintiff, |
| |) | |
| v. |) | Civil Action No. |
| |) | 3-91-1340-H |
| DAN MORALES, ATTORNEY |) | December 10, 1991 |
| GENERAL OF THE STATE OF |) | |
| TEXAS, ET AL. |) | |
| |) | Defendants. |
| _____ |) | |

Consent Order

This action was commenced by the filing of the Complaint herein. The parties have been represented in these proceedings by the attorneys whose names appear hereafter. The parties have agreed to the entry of this Consent Order without trial or adjudication of any issue of fact or law. The parties having requested the Court to enter this Consent Order, it is by the Court this 10 day of December, 1991 ORDERED, ADJUDGED, AND DECREED that:

A. This Court has jurisdiction of the subject matter herein and of the parties hereto.

⁵ *Editor's Note:* Agreement between TRW [now Experian] and Attorneys General of Alabama, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Louisiana, Michigan, Missouri, Nevada, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, Rhode Island and Texas.

D. In connection with the furnishing of Consumer Reports, TRW shall be, and hereby is, enjoined from failing to comply with the FCRA. TRW shall be enjoined from failing to:

1. Maintain reasonable procedures to prevent the occurrence or reoccurrence of Mixed Files, including but not limited to:

- a. Continuing its current efforts to improve its information gathering, storing, and generating systems to reduce the occurrence of Mixed Files, through modification of its software system to enable such system to accommodate and use, for matching and identification purposes, a Consumer's Full Identifying Information; and
- b. Not later than July 31, 1992, implementing and utilizing changes to its system designed to prevent, to the extent it reasonably can, the reoccurrence of Mixed Files, once known.

2. Follow reasonable procedures to assure maximum possible accuracy of the information concerning the Consumer about whom the Consumer Report relates, including but not limited to:

- a. Maintaining reasonable procedures, before Credit Information from TRW's Subscribers is utilized by TRW, to detect logical errors in such Credit Information;
- b. Within one hundred twenty (120) days of the date of this Order, advising its current Subscribers, and thereafter advising new Subscribers, that they will be expected to attempt to (i) obtain Full Identifying Information from Consumers and (ii) use Full Identifying Information when reporting Credit Information to TRW and when requesting Consumer Reports from TRW;
- c. Within ninety (90) days of the date of this Order, advising its current Subscribers, and, for the four (4) year period following the date of this Order, advising its new Subscribers, that they will be expected, to the extent possible consistent with their practices, adopt the B2/B3 Segments of the Metro Consumer Reporting Format;
- d. Within ninety (90) days of the date of this Order, begin implementing and then continuing, in good faith, for the four (4) year period from the date of this Order, a program to provide Consumers, who have been denied credit based on a TRW Consumer Report, toll-free access to TRW's consumer assistance personnel; and
- e. By November 1, 1992, begin implementing and then continuing, in good faith, for the three (3) year period from that date, a program to provide Consumers, who have received Consumer Reports from TRW and have questions regarding the accuracy or meaning of such reports, toll-free access to TRW's consumer assistance personnel.

3. For a period of four (4) years from the date of this Order, furnish a Consumer Report requested by a Consumer within four (4) business days after TRW receives a request from the Consumer (properly directed to a TRW consumer assistance office and accompanied by proper payment, if necessary) for the Consumer Report; deposit of such report in the United States Mail in an envelope addressed to the Consumer, with postage prepaid, within the time limit shall constitute compliance with this provision. So long as TRW maintains reasonable procedures to comply with the provisions of this paragraph, TRW shall not be in breach of this paragraph in any instance in which it is unable to furnish a Consumer Report as required herein due to factors beyond its control, nor shall TRW be in breach of this paragraph in any instance in which TRW voluntarily furnishes a Consumer Report to

a Consumer under circumstances in which TRW is not required to furnish such a Consumer Report.

4. For a period of four (4) years from the date of this Order, furnish a Consumer with his or her Consumer Report without charge if:

- a. A TRW Subscriber has received a TRW Consumer Report on the Consumer and has denied credit to the Consumer based in whole or in part on such Consumer Report within sixty (60) days of the Consumer's request for the Consumer Report; or
- b. TRW is given evidence that one who received a Consumer Report on the Consumer issued by a TRW competitor has denied credit to the Consumer within (60) days of the Consumer's request for the Equifax Consumer Report.

5. Beginning sixty (60) days from the date of this Order and continuing for a period of four (4) years from that date, in all instances other than those described in paragraph D.4. above, charge any Consumer no more than \$7.50 for providing that Consumer's Consumer Report. Beginning January 1, 1993, this amount may be adjusted on January 1 of each year based on increases in the Consumer Price Index with fractional changes rounded upward to the nearest half dollar.

6. Reinvestigate items of information, the completeness or accuracy of which is disputed by a Consumer, and thereafter record in its system the current status of such items of information, when the Consumer directly conveys the dispute to TRW and TRW does not have reason to believe the dispute is frivolous or irrelevant.

a. Such reinvestigation shall include but not be limited to:

- i. Completing any reinvestigation, *i.e.*, verifying, deleting, or modifying all disputed items in the Consumer's File, within thirty (30) days of receipt of the Consumer's dispute by TRW; provided, however, that if TRW in good faith cannot determine the nature of the Consumer's dispute, TRW shall attempt to determine the nature of the dispute by contacting the Consumer by mail or telephone within five (5) business days of receiving the Consumer's dispute, and complete its reinvestigation within thirty (30) days of the Consumer's response if TRW in good faith can then determine the nature of the Consumer's dispute. Within ninety (90) days of the date of this Order, TRW will provide the States with a copy of the letter it will send to Consumers when it cannot determine the nature of the Consumer's dispute as described in this paragraph. If TRW contacts the Consumer by telephone rather than by mail as described in this paragraph, TRW shall at a minimum communicate to the Consumer the same information contained in the letter described in this paragraph;
- ii. Stating to the source used to verify the disputed information, or the Subscriber who provided the disputed information to TRW, the nature and substance of the Consumer's dispute;
- iii. Accepting the Consumer's version of the disputed information and correcting or deleting the disputed item, when the Consumer submits to TRW documentation obtained from the source of the item in dispute or from public records confirming that the disputed information on the Consumer Report was inaccurate or incomplete, unless TRW in good faith has reason to doubt the authenticity of the documentation, in which case TRW need not accept the Consumer's version of the dispute if it

reinvestigates the dispute by contacting the source of the item or checking the public record and verifies that the documentation is not authentic;

- iv. Employing reasonable procedures designed specifically to reinvestigate Consumer disputes that result from Mixed Files;
 - v. For a period of four (4) years from the date of this Order, when a Consumer disputes information regarding a tax lien, judgment, or other public record, using reasonable procedures to reverify the disputed item from court or other public records, including an examination of such records to search for a release of a tax lien or satisfied judgment, or changing the disputed item to the Consumer's version; and
 - vi. Beginning six (6) months from the date of this Order, and continuing for a period of four (4) years from that date, implementing procedures so that TRW personnel will, upon request by the Consumer, provide the Consumer with the name and address of the source of the disputed Credit Information.
- b. So long as TRW maintains reasonable procedures, including procedures for handling disputes received by TRW at offices other than the TRW consumer assistance office(s) designated by TRW for receipt of consumer disputes, to comply with the provisions of paragraph D.6.a., TRW shall not be deemed in violation of such provisions in any instance in which TRW is unable to comply with such provisions due to factors beyond its control.
7. For a period of four (4) years from the date of this Order, if TRW concludes a Consumer's dispute is frivolous or irrelevant and declines to reinvestigate the dispute, notify the Consumer, within seven (7) business days of the day on which TRW receives such dispute, of TRW's refusal to reinvestigate and the reasons for concluding the dispute is frivolous or irrelevant; provided, however, that the provisions of paragraph D.6.b. above shall also apply to this paragraph.
8. For a period of four (4) years from the date of this Order, upon conclusion of the reinvestigation of information, the completeness or accuracy of which was disputed by a Consumer:
- a. Provide the Consumer with the current correct version of the disputed information, as determined by TRW; and
 - b. If the information has not been changed to the Consumer's version, notify the Consumer of his or her right to file a statement in accordance with section 611 of the FCRA setting forth the nature of the Consumer's dispute and that TRW will include the statement in any subsequent Consumer Report containing the information the Consumer has disputed.
9. Maintain reasonable procedures so that items disputed by a Consumer, which are deleted or corrected as inaccurate or unverifiable upon reinvestigation, do not subsequently appear on Consumer Reports pertaining to that Consumer, including but not limited to:
- a. Completing by December 1, 1991, implementation of procedures so that Serious Derogatory Information deleted from a File as a consequence of a Consumer's dispute of such information does not subsequently appear on that Consumer's Consumer Report; provided, however, that if, after TRW has deleted such information from the File, TRW reverifies such information, TRW may reinsert such information in the File and report such information on subsequent Consumer

Reports concerning that Consumer if, and only if, TRW advises the Consumer in writing that the information has been reinserted;

- b. Continuing its current efforts, which TRW will in good faith attempt to complete by December 31, 1992, to alter its system so that the conditions that apply to Serious Derogatory Information in paragraph D.9.a. above also apply to other information which is disputed by the Consumer regarding the status of any item shown on the Consumer Report; and
 - c. Until the conditions that apply to Serious Derogatory Information described in paragraph D.9.a. above also apply to other information which is disputed by the Consumer regarding the status of any item shown on the Consumer Report, in the event that TRW's Subscriber does not respond to TRW's reinvestigation, advising the Consumer when TRW changes or deletes information on the Consumer's Consumer Report after it has been disputed by the Consumer that the changed or deleted item may reappear.
10. Make clear and conspicuous disclosure to any Consumer, in connection with any reinvestigation in which an item has been deleted, of the Consumer's right to request TRW, and of TRW's obligation pursuant to Section 611(d) of the FCRA, to furnish notification to users of Consumer Reports who have received a Consumer Report from TRW for that Consumer within the past two (2) years for Employment Purposes, or within the past six (6) months for any other purpose, that an item has been deleted.
11. For a period of four (4) years from the date of this Order, make clear and conspicuous disclosure in writing, at the time TRW provides a Consumer Report in writing to a Consumer that is not the result of a reinvestigation, of the Consumer's right to dispute any information on the Consumer Report and to have such information changed or deleted if it cannot be reverified, unless the Consumer's dispute is frivolous or irrelevant.
12. By December 31, 1992, after conducting Consumer research, institute changes to the format of the TRW Consumer Report that is currently disclosed to Consumers to make such format easier for a Consumer to read and understand. For a period of four (4) years from the date of this Order, TRW shall notify the States if it intends to make any other modification to such Consumer Report format and it shall not make any such modification unless it believes in good faith that the modification will make such Consumer Report easier for a Consumer to read or understand.
13. Within one hundred eighty (180) days of the date of this Order, require in TRW's contracts that those who obtain Consumer Reports from TRW in the form of lists developed through Pre-screening make a firm offer of credit to each person on the lists and take reasonable steps to enforce those contracts.
14. Within one hundred eighty (180) days of the date of this Order, require in its contracts with Subscribers, and take reasonable steps to enforce such requirements, that whenever a Subscriber purchases a Consumer Report from TRW for resale to a Person who intends to use the Consumer Report for Employment Purposes pursuant to § 604(3)(b) of the FCRA:
- a. Such Subscriber identify that it intends to resell the Consumer Report for Employment Purposes at the time the Subscriber requests the Consumer Report from TRW;
 - b. Such Subscriber, upon the Consumer's request, provide to the Consumer who is the subject of the Consumer Report the name and address of the Person to whom the Consumer Report was resold; and

- c. Such Subscriber resell a Consumer Report for Employment Purposes only if that Consumer Report was originally obtained from TRW for Employment Purposes pursuant to paragraph D.14.a. above.

15. Whenever TRW provides a Consumer Report for Employment Purposes as described in paragraph D.14. above, and such Consumer Report contains public record information that is likely to have an adverse effect upon a Consumer's ability to obtain employment, either:

- a. Maintain strict procedures designed to insure that public record information that is likely to have an adverse effect on a Consumer's ability to obtain employment is complete and up-to-date as provided in Section 613(2) of the FCRA; or
- b. At the time such public record information is reported to the Subscriber, notify the Consumer of the Subscriber's name and address and that:
 - i. such public record information was included in the Consumer Report that was provided to the Subscriber;
 - ii. the Subscriber intended to resell the Consumer Report for Employment Purposes to another Person; and
 - iii. the Consumer may contact the Subscriber to learn the name and address of the Person to whom the Subscriber resold such Consumer Report for Employment Purposes.

16. Beginning December 31, 1992, disclose to each Consumer who requests his or her Consumer Report any risk score that is provided after that date to recipients of the Consumer Report whose identity is required to be disclosed under Section 609(a)(3) of the FCRA, together with an explanation of risk scores.

E. For the five (5) year period following the entry of this Order, TRW shall measure, monitor, and test the extent to which changes in TRW's computer system, including its algorithms, reduce the incidence of Mixed Files; for five (5) years following the entry of this Order, TRW shall report annually in writing, to a representative designated by the States (the "State Representative"), the results of any comparison done by TRW using methodologies agreed upon between TRW and the Federal Trade Commission ("FTC"), to measure the relative incidence of Mixed Files, and to the extent not otherwise provided, shall include with such reports the results of a statistically significant analysis to determine the incidence of Mixed Files.

F. TRW shall gather on an annual basis for five (5) years following the entry of this Order and provide to the State Representative the following information:

- 1. The approximate total number of Consumer Reports issued by TRW to Consumers;
- 2. The total number of Consumer Reports for which a dispute is conveyed to TRW by Consumers;
- 3. The approximate total number of disputed items; and
- 4. The total number of each type of dispute received by TRW, as denoted on TRW's form 102 or any successor forms.

G. Except for paragraph F above, TRW shall maintain for five (5) years and upon request make available to the State Representative for inspection and copying, documents demonstrating compliance with the requirements of this Order. Such documents shall include, but are not limited to, all contracts governing Subscriber access to or use of Credit Information, all written reports or memoranda concerning the testing, auditing or monitoring of its systems, instructions given to employees regarding compliance with the provisions of this Order, and any notices provided to Subscribers in connection with the terms of this Order.

H. TRW shall deliver a copy of this Order to all present and future management officials having administrative, sales, advertising, or policy responsibilities with respect to the subject matter of this Order.

I. For the five (5) year period following entry of this Order, TRW shall notify the States at least thirty (30) days prior to any proposed change in TRW, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of this Order.

J. TRW shall, within one hundred eighty (180) days of the date of this Order, deliver to the State Representative a report, in writing, setting forth the manner and form in which it has complied with this Order as of that date. The States shall keep the report and its contents, or any report, document, or other information provided under paragraphs E, F, or G above, or any notification provided under paragraph I above, strictly confidential, and the States shall not disclose any such notification, information, document, or report, or the contents of any of the foregoing, except to the extent the States in good faith believe such disclosure must be made to the Court to enforce the terms of this Order.

K. If the FCRA is amended (or other similar legislation enacted) or the FTC issues any interpretation of the FCRA, relating to any obligation imposed on TRW herein which creates any new statutory provision or interpretation that is less stringent than the terms of this Order, and if TRW then intends to conform the manner in which it conducts its business as a Consumer Reporting Agency or its use of Credit Information to such new statutory provision or interpretation, TRW shall so notify the States promptly.

L. If, after the entry of this Order, the parties should have any dispute arising out of or relating to this Order or the parties' respective rights and duties hereunder, the Court will entertain no motion for enforcement of any provision of this Order unless counsel for TRW and State Representative shall have previously conferred concerning, and in good faith tried to resolve, all of the disputed issues. At the time of filing any motion relating to enforcement of this Order, counsel for the movant shall serve and file a certificate of compliance with this paragraph.

M. All claims, causes of action, allegations or requests for relief by the States are merged into this Order. In addition, all causes of action asserted by TRW for damages, costs of attorneys' fees are merged into this Order, but TRW expressly reserves the right to assert any affirmative defense in any future action (including without limitation TRW's arguments regarding preemption and compliance with federal law) or to seek declaratory relief, if appropriate, in some future action based upon conduct occurring after the date of this Order.

N. Other than with respect to a proceeding to enforce this Order, neither this Order nor any provision thereof shall be offered or received in evidence against TRW in any action or proceeding of any kind or nature, or otherwise used as evidence or an admission of any fact or acknowledgment of liability of any kind by TRW.

O. TRW agrees to deposit with the States a check payable to the Missouri Merchandising Practices Restitution Fund in the amount of \$300,000, to be distributed as the States may determine, as the States' costs in connection with this matter.

Dated: December 10, 1991

Judge Barefoot Sanders
United States District Judge