

**STATE OF FLORIDA  
DEPARTMENT OF LEGAL AFFAIRS  
OFFICE OF THE ATTORNEY GENERAL**

**IN THE MATTER OF:**

**Certegy Check Services, Inc., and  
Fidelity National Card Services, Inc.,**

**Respondents**

**Case No. L07-3-1109**

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

Pursuant to the provisions of Chapter 501, Part II, Florida Statutes (2009), the STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, hereinafter the "Attorney General," caused an investigation to be made into certain acts and practices relating to data theft incidents at Certegy Check Services, Inc., a Delaware corporation, whose principal address is 11601 Roosevelt Boulevard North, St. Petersburg, Florida 33716, and Fidelity National Card Services, Inc., a Florida corporation, whose principal address is 11601 Roosevelt Boulevard North, St. Petersburg, Florida 33716, hereinafter collectively referred to as "Respondents."

Respondents are prepared to enter into this Assurance of Voluntary Compliance, hereinafter "AVC," without any admission that Respondents have violated the law and for the purpose of resolution of this investigation, and the Attorney General, by and through the undersigned Deputy Attorney General, being in agreement, does in this matter accept this AVC in immediate termination of its investigation, pursuant to Section 501.207(6), Florida Statutes,

and by virtue of the authority vested in the Office of the Attorney General by said statute. The Attorney General and Respondents hereby agree as follows:

**I. DEFINITIONS**

- A. “Consumer” shall mean any person, natural person or individual, including an individual whose personal information has been obtained or collected by Respondents.
- B. “Effective Date” shall mean the date on which the Attorney General, by and through its Deputy Attorney General, signs this Assurance of Voluntary Compliance (“AVC”).
- C. “Certegy” shall mean Certegy Check Services, Inc., a Delaware corporation, with its principal address at 11601 Roosevelt Boulevard North, St. Petersburg, Florida 33716 and a principal address at 100 2<sup>nd</sup> Avenue South, Suite 1100S, St. Petersburg, Florida 33701 and Fidelity National Card Services, Inc., a Florida corporation, with its principal address at 11601 Roosevelt Boulevard North, St. Petersburg, Florida 33716.
- D. “Personal Information” shall mean a resident’s first name and last name or a first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) a Social Security number; or (b) driver’s license number or state-issued identification card number; or (c) financial institution or bank account number, or credit or debit card number, with or without any security code, access code, personal identification number or password, that would permit access to a resident’s financial institution or bank account; provided, however, that “Personal Information” shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

**II. STIPULATED FACTS**

2.1 Certegy is a specialty consumer reporting agency pursuant to the Federal Fair Credit Reporting Act and maintains databases containing hundreds of millions of records relating to individual check-writing histories for provision of online, real-time check authorization.

2.2 From July 2001 through June 2007, Certegy stored Personal Information in connection with returned check collections, electronic check payments for online or telephone

purchases, and credit and debit card transactions. Certegy continues to collect and maintain Personal Information.

2.3 The theft of 2.3 million consumer records from Certegy, including bank account information or credit card numbers and expiration dates and consumer identifying information such as name, address, and telephone numbers was publicly announced on July 3, 2007. As Certegy's investigation continued, the number of records stolen was determined to be in excess of 8.5 million. This number was subsequently reduced to approximately 5.9 million records after duplicate and fraudulent records were eliminated.

2.4 Certegy notified the Attorney General, as well as the Federal Trade Commission, about the data theft and its efforts to minimize consumer injury.

2.5 The Attorney General conducted an investigation into issues relating to the data theft incidents pursuant to Chapter 501, Part II, and Section 817.5681, Florida Statutes, including measures implemented to safeguard sensitive consumer information. The Attorney General alleged that Certegy had not complied with all aspects of the Safeguards Rule, 16 C.F.R. Part 314; Certegy has denied these allegations.

2.6 William Gary Sullivan has been adjudicated guilty of federal felony offenses of fraud and related activity in connection with computers, and conspiracy in connection with the theft of millions of consumer records during the period April 2003 through June 2007.

2.7 Certegy offered relief to consumers whose information was included in the stolen records and who participated in a class action settlement approved by the U.S. District Court on September 3, 2008 in *Lockwood v. Certegy Check Services, Inc.*, Case No.: 07-CV-01434 (M.D. Fla.) and *Beringer v. Certegy Check Services, Inc.*, Case No.: 07-CV-01657 (M.D. Fla.) (and other class action litigation consolidated therewith): (a) credit monitoring for 1 year (in addition

to credit monitoring provided to consumers who requested monitoring after learning of the breach); (b) bank account monitoring for 2 years; (3) reimbursement of out-of-pocket costs (check printing or credit monitoring costs) limited, in the aggregate, to \$1 million; and (4) identity theft reimbursement for out-of-pocket losses limited, in the aggregate, to \$4 million (with claims due no later than 90 days following class members' first knowledge of the identity theft or March 31, 2011).

2.8 The parties desire to resolve the issues raised during the course of this investigation by the theft of data by Sullivan and the safeguards implemented by Certegy for the storage, access and use of Personal Information by way of this AVC, without any administrative or judicial adjudication.

### **III. INJUNCTIVE RELIEF AND COMPLIANCE**

#### **3.1 INFORMATION SECURITY PROGRAM**

Respondents, in connection with the advertising, marketing, promotion, offering for sale, sale, or providing of any product or service, in or affecting commerce, shall, no later than the Effective Date, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to Respondents' size and complexity, the nature and scope of Respondents' activities, and the sensitivity of the personal information collected from or about consumers, including:

- A. the designation of an employee or employees to coordinate and be accountable for the information security program.

- B. the identification of material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to:
- (1) employee training and management;
  - (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and
  - (3) prevention, detection, and response to attacks, intrusions, or other systems failures.
- C. the design and implementation of reasonable safeguards to control the risks identified through risk assessment and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures.
- D. the evaluation and adjustment of Respondents' information security program in light of the results of the testing and monitoring required by subparagraph C. of paragraph 3.1 above, any material changes to Respondents' operations or business arrangements, or any other circumstances that Respondents know or have reason to know may have a material impact on the effectiveness of its information security program.

### 3.2 ASSESSMENTS

A. Respondents shall, in connection with their compliance with paragraph 3.1, obtain initial and annual assessments and reports (“Assessments”) as provided in paragraph 3.2B. herein, from a qualified, objective, independent third-party professional (“Third-Party Assessor”), who uses procedures and standards generally accepted in the profession. Each Assessment shall:

- (1) set forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;
- (2) explain how such safeguards are appropriate to respondent’s size and complexity, the nature and scope of Respondents’ activities, and the sensitivity of the personal information collected from or about consumers;
- (3) explain how the safeguards that have been implemented meet or exceed the protections required by the paragraph 3.1 of this AVC; and
- (4) certify that Respondents’ security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

B. An Assessment shall address compliance for each of the following periods:

- (1) the first one hundred and eighty (180) days after the Effective Date for the initial Assessment; and
- (2) each one (1) year period thereafter for five (5) years after the Effective Date.

### 3.3 PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS

To the extent that any of the Respondents are subject to the Payment Card Industry Data Security Standards, as amended or subsequently amended, Respondents will maintain compliance with such standards. Upon the request of the Attorney General, Respondents will provide the Attorney General with a copy of any annual on-site Payment Card Industry or “PCI” Data Security Assessment (or similar assessment) performed by a qualified security assessor for the purpose of validating compliance with such standards within ten (10) days of the Attorney General’s request.

### 3.4 RETENTION OF DOCUMENTS

A. Respondents shall retain all assessments, whether pursuant to paragraph 3.2 or 3.3 above, for a period of three (3) years after the date of preparation of each assessment.

B. Respondents shall maintain documents relating to compliance with this AVC:

- (1) for five (5) years after the Effective Date, including, but not limited to, documents, whether prepared by or on behalf of

Respondents, that contradict, qualify, or call into question

Respondents' compliance with this AVC; and

- (2) for three (3) years after the date of preparation of each Assessment required under paragraph 3.2 herein, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of Respondents including, but not limited to, all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials relating to Respondents' compliance with paragraphs 3.1 and 3.2 of this Section III.

### 3.5 SUBMISSION OF ASSESSMENTS TO ATTORNEY GENERAL

Upon the request of the Attorney General, Respondents shall provide a copy of any assessment, whether pursuant to paragraph 3.2 or 3.3 above, to the Attorney General within ten (10) days after the Assessment has been prepared or after an Assessment has been requested.

## IV. MONETARY RELIEF

4.1 Respondents agree to pay the Attorney General the total amount of EIGHT HUNDRED FIFTY THOUSAND DOLLARS (\$850,000) within thirty (30) days of the Effective Date of this AVC for investigative and attorney's fees and costs of this matter and for costs associated with ongoing and future enforcement initiatives pursuant to Chapter 501, Part II, Florida Statutes. Payment for investigative and attorney's fees and costs shall be made to the Legal Affairs' Revolving Trust Fund by cashier's check payable to the "Department of Legal Affairs' Revolving Trust Fund" and shall be delivered to Julia A. Harris, Senior Assistant Attorney General, Office of the Attorney General, Concourse Center IV, 3507 East Frontage



Road., Suite 325, Tampa, Florida 33607. The total amount shall be deposited in the Department of Legal Affairs' Revolving Trust Fund, in accordance with Section 501.2101(1), Florida Statutes.

4.2 Respondents agree to contribute the total amount of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) to Seniors vs. Crime, Inc., a Florida nonprofit corporation, for educational, investigative and crime prevention programs for the benefit of senior citizens and the community as a whole, within thirty (30) days of the Effective Date. Payment shall be made by cashier's check or other certified funds, made payable to "SENIORS VS. CRIME, INC." and delivered to Julia A. Harris, Senior Assistant Attorney General, Office of the Attorney General, Concourse Center IV, 3507 East Frontage Road., Suite 325, Tampa, Florida 33607.

#### **V. CONDUCT GOING FORWARD**

5.1 The term of this AVC shall be five (5) years from the Effective Date, after which, with the exception of paragraph 3.5 above, it will expire and be of no force or effect.

5.2 Where applicable, those affiliates of Certegy that regularly conduct business related to its check and card operations that possess Personal Information and are subject to the Payment Card Industry Data Security Standards will continue to maintain compliance with such standards, as amended, from time to time, and will provide the Attorney General with a copy of any Annual On-Site PCI Data Security Assessment performed by a Qualified Security Assessor for the purpose of validating compliance with such standards within ten (10) days of the Attorney General's request.

5.3 The Attorney General will give advance notice and a reasonable opportunity to cure if it has any reason to suspect or believe that any material violation of the AVC has occurred before declaring breach and seeking enforcement.

5.4 Respondents agree to pay the reasonable investigative and attorney's fees and costs incurred by the Attorney General, including third-party expert assistance and advice (selected at the sole discretion of the Attorney General) if Respondents are adjudged to have breached the AVC.

## **VI. ACCEPTANCE**

This AVC shall become effective upon its acceptance by the Deputy Attorney General, who may refuse to accept it at his or her discretion. The payment of any monies by the Respondents to the Attorney General pursuant to Section IV above, does not constitute acceptance by the Attorney General of the terms of this AVC without the express written approval of the Deputy Attorney General, and, unless otherwise agreed, any such payments shall immediately be returned to Respondents in the event that the Deputy Attorney General disapproves of all or a portion of this AVC.

## **VII. COMPULSORY PROCESS**

Nothing in this AVC shall limit the Attorney General's lawful use of compulsory process, pursuant to Section 501.206, Florida Statutes, or any other applicable law to obtain any documentary material, tangible things, testimony, or information relevant pursuant to Chapter 501, Part II, Florida Statutes.

## **VIII. GENERAL PROVISIONS**

9.1 No change in any form of doing business or organizational identity shall be made by Respondents as a method of avoiding the terms of this AVC.

9.2 The duties and obligations undertaken in connection with this AVC shall survive any change in form of doing business or organizational identity and shall apply to Respondents' successors and assigns, officers, agents and employees for the full five (5) year term.

9.3 Nothing in this AVC shall be construed to permit or authorize any violation of the laws of the State of Florida or federal or local laws, regulations, ordinances, and codes, nor shall anything in this AVC be deemed to be construed to relieve or exempt Respondents of their duty to comply with the laws of the State of Florida and all federal or local laws, regulations, ordinances, and codes.

9.4 Nothing in this AVC shall be construed as a waiver or release of any private rights, causes of action, or remedies of any third party against the Respondents with respect to the acts and practices covered by this AVC.

9.5 Nothing in this AVC precludes the Attorney General from pursuing any law enforcement action with respect to the acts or practices of the Respondents not covered by this AVC or any acts or practices of the Respondents conducted after the entry of this AVC.

9.6 This AVC does not constitute an endorsement or approval by the Attorney General or any employees or representatives of any of Respondents' information security policies or practices or their products or services and is not an endorsement or approval of Respondents' past or future information security practices. No express or implied representations shall be made that the Attorney General (or the State of Florida, Department of Legal Affairs, or Office of the Attorney General, or referenced in any similar manner) or the former or current Attorney General or any former or current Attorney General employee, or any law enforcement or regulatory authority has endorsed or approved Respondents' past or future information security practices.

9.7 No waiver of any term, provision, or condition of this AVC, whether by conduct or otherwise, in one or more instances, shall be deemed to be, or shall constitute, a waiver of any provision of this AVC, and no waiver shall be binding unless executed in writing by the party against whom the waiver is asserted.

9.8 This AVC shall be governed by, construed and enforced exclusively in accordance with and subject to the laws of the State of Florida.

9.9 Respondents specifically agree that time is of the essence in the performance of all terms and conditions of this AVC, specifically including payment of monetary relief.

9.10 Fidelity National Information Services, Inc. (FIS) agrees that Respondents, its subsidiaries, shall comply with the terms of this AVC as reflected by its signature below.

(Signatures begin on next page)

**IN WITNESS WHEREOF**, Respondent, Certegy Check Services, Inc., a Delaware corporation, as Respondent herein, has caused this AVC to be executed by its Sr. Vice President as a true act and deed, in the County and State listed below, as of the date affixed thereon.

BY MY SIGNATURE I hereby affirm that I am acting in my capacity and within my authority as Sr. Vice President of Certegy Check Services, Inc., a Delaware corporation, and that by my signature I am binding the corporation to the terms and conditions of this AVC.

CERTEGY CHECK SERVICES, INC.

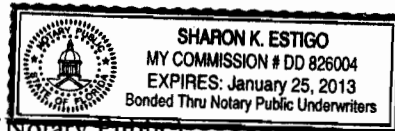
By: William Roese  
William Roese  
(printed name)  
Its \_\_\_\_\_  
(title)

STATE OF FLORIDA  
COUNTY OF Pinellas

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, personally appeared William Roese and acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 22<sup>nd</sup> day of March, 2010.

Sworn to and subscribed before me this 22<sup>nd</sup> day of March, 2010.

Sharon K. Estigo  
NOTARY PUBLIC



(print, type or stamp commissioned name of Notary Public)  
Personally known X or Produced identification \_\_\_\_\_ (check one)  
Type of Identification Produced: \_\_\_\_\_

IN WITNESS WHEREOF, Respondent, Fidelity National Card Services, Inc., a Florida corporation, as Respondent herein, has caused this AVC to be executed by its President, as a true act and deed, in the County and State listed below, as of the date affixed thereon.

BY MY SIGNATURE I hereby affirm that I am acting in my capacity and within my authority as President of Fidelity National Card Services, Inc., a Florida corporation, and that by my signature I am binding the corporation to the terms and conditions of this AVC.

FIDELITY NATIONAL CARD SERVICES, INC.

By:

Robert W. Bream  
Robert W. Bream

(printed name)

Its President, Fidelity Nat'l Card Svcs, Inc.  
(title)

STATE OF FLORIDA  
COUNTY OF PINELLAS

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, personally appeared Robert W. Bream and acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 24<sup>th</sup> day of March, 2010.

Sworn to and subscribed before me this 24<sup>th</sup> day of MARCH, 2010.

Sharon K. Estigo  
NOTARY PUBLIC



(print, type or stamp commissioned name of Notary Public)

Personally known  or Produced identification \_\_\_\_\_ (check one)

Type of Identification Produced: \_\_\_\_\_

IN WITNESS WHEREOF, Fidelity National Information Services, Inc., a Georgia corporation, has caused this AVC to be executed by its CEO, General Counsel & Corp. Secretary, as a true act and deed, in the County and State listed below, as of the date affixed thereon.

BY MY SIGNATURE, I hereby affirm that I am acting in my capacity and within my authority as CEO, General Counsel & Corp. Secretary of Fidelity National Information Services, Inc., a Georgia corporation, and that by my signature I am binding the corporation to the terms and conditions of this AVC.

FIDELITY NATIONAL INFORMATION SERVICES, INC.

By:

[Signature]  
Michael L. Gravelle

(printed name)

Its CEO, General Counsel & Corp. Secretary  
(title)

STATE OF FLORIDA  
COUNTY OF Duval

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, personally appeared Michael L. Gravelle and acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 15<sup>th</sup> day of March, 2010.

Sworn to and subscribed before me this 15<sup>th</sup> day of March, 2010.

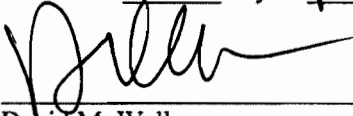
[Signature]  
NOTARY PUBLIC

(print, type or stamp commissioned name of Notary Public)  
Personally known  or Produced identification \_\_\_\_\_ (check one)  
Type of Identification Produced: \_\_\_\_\_



APPROVED AS TO FORM:

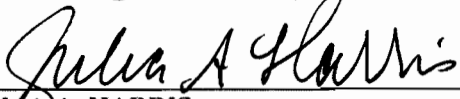
Dated this 26<sup>th</sup> day of March, 2010



David M. Wells  
Gunster, Yoakley & Stewart, P.A.  
One Enterprise Center  
225 Water Street, Suite 1750  
Jacksonville, Florida 32202  
Attorney for Respondents

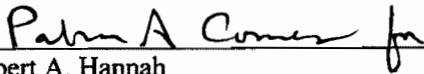
OFFICE OF THE ATTORNEY GENERAL

Dated this 30<sup>th</sup> day of March, 2010



JULIA A. HARRIS  
Senior Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
3507 E. Frontage Road, Suite 325  
Tampa, FL 33607

ACCEPTED this 31<sup>st</sup> day of March, 2010.



Robert A. Hannah  
Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol  
Tallahassee, FL 32399-1050  
(850) 245-0140