

1
2 **UNITED STATES DISTRICT COURT**
3 **SOUTHERN DISTRICT OF CALIFORNIA**

4 FEDERAL TRADE COMMISSION,

5 Plaintiff,

6 v.

7 NEOVI, INC., d/b/a NEOVI DATA
CORPORATION and QCHEX.COM;

8 G7 PRODUCTIVITY SYSTEMS, INC.,
9 d/b/a QCHEX.COM;

10 JAMES M. DANFORTH, individually, and
as an officer of Neovi, Inc. and G7
11 Productivity Systems, Inc.; and

12 THOMAS VILLWOCK, individually, and
as an officer of Neovi, Inc.,

13 Defendants.
14

CIVIL NO. 06CV1952 JLS (JMA)

FINAL ORDER FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF

15
16 This matter comes before the Court on Plaintiff Federal Trade Commission's
17 ("Commission," "FTC," or "Plaintiff") Motion for Summary Judgment ("Motion") against
18 Defendants Neovi, Inc., d/b/a Neovi Data Corporation and Qchex.com ("Neovi"); G7
19 Productivity Systems, Inc., d/b/a Qchex.com ("G7"); James M. Danforth ("Danforth"); and
20 Thomas Villwock ("Villwock") (collectively, "Defendants"). Having duly considered the FTC's
21 Motion, Defendants' opposition thereto, and the entire record herein, it is **ORDERED** that
22 Plaintiff's Motion is **GRANTED** and Defendants' Motion for Summary Judgment is **DENIED**.

23 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** as follows:

24 **FINDINGS**

25 1. This Court has jurisdiction over the subject matter and parties pursuant to 15
26 U.S.C. §§ 53(b) and 57b and 28 U.S.C. §§ 1331, 1337(a), and 1345.

1 2. Venue is proper as to all parties in this District under 15 U.S.C. § 53(b) and 28
2 U.S.C. §§ 1391(b) and (c).

3 3. Defendants have been properly served.

4 4. Defendants' activities, as alleged in the Complaint, are in or affecting
5 "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6 5. The Complaint states a claim upon which relief may be granted against
7 Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

8 6. Defendants have violated Section 5 of the FTC Act, 15 U.S.C. § 45, as alleged in
9 Plaintiff's Complaint.

10 7. Defendant Neovi filed a petition for relief under Chapter 11 of the Bankruptcy
11 Code, 11 U.S.C. §§ 101 *et seq.*, on September 20, 2007. *In re Neovi*, Case No. 07-5218 (Bankr.
12 S.D. Cal.). On October 11, 2007, the bankruptcy case was converted to a Chapter 7 liquidation,
13 and Nancy L. Wolf was subsequently appointed as the Chapter 7 bankruptcy trustee. Pursuant to
14 11 U.S.C. § 362(b)(4), the prosecution of this action against Defendant Neovi, including the
15 entry and enforcement of a judgment other than a money judgment, is excepted from the
16 automatic stay under the Bankruptcy Code because this is an action brought by the Commission
17 as a governmental unit to enforce its police or regulatory power.

18 8. Entry of this Order is in the public interest.

19 **ORDER**

20 **DEFINITIONS**

21 For the purpose of this Permanent Order, the following definitions shall apply:

22 1. "Check" shall include any negotiable instrument that can be, or purports to be,
23 drawn on an account held at a financial institution.

1 2. “Corporate Defendants” means Neovi, Inc., also d/b/a Neovi Data Corporation
2 and Qchex.com (“Neovi”); G7 Productivity Systems, also d/b/a Qchex.com (“G7”), and their
3 successors and assigns.

4 3. “Creation of” or “creating” or “created” or “create” a check means any
5 involvement in the creating, designing, composing, drawing, or writing on paper or electronic
6 media a check drawn on a specific financial institution.

7 4. “Customer” means any person who is or may be required to pay for goods or
8 services offered by Defendants in connection with any check creation or check delivery services.

9 5. “Defendants” means all of the Individual Defendants and the Corporate
10 Defendants, individually, collectively, or in any combination.

11 6. “Delivery of” or “delivering” or “delivered” or “deliver” a check means any
12 involvement in the mailing, faxing, e-mailing, sending, or transmitting by any other method a
13 check drawn on a specific financial institution.

14 7. “Document” is synonymous in meaning with, and equal in scope to, the usage of
15 the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs,
16 charts, photographs, audio and video recordings, computer records, and other data compilations
17 from which information can be obtained and translated, if necessary, into reasonably usable form
18 through detection devices. A draft or non-identical copy is a separate document within the
19 meaning of the term.

20 8. “Financial account” or “account at a financial institution” means any account,
21 including, but not limited to, any deposit account, checking account, savings account, money
22 market account, m whichsdm r aeextensof” ordm wtTJT*0009 T12-.0009 T12[from)ncial institution.

1 prospective customer and having that person use the information to verify the
2 prospective customer's identity; and

3 2. Perform account control verification for each financial account either by:

4 a. engaging a person not related to, controlled by, or owned by any of the
5 Defendants, either in whole or in part, that provides account control
6 verification services for its clients to verify a customer's authority to draw
7 funds on a financial account by obtaining from a customer the customer's
8 online banking user name and password information and transferring the
9 information to the financial institution identified by the customer, and
10 only permitting the customer to create an account with any of the
11 Defendants when the online banking user name and password are
12 confirmed by the person engaged. The Defendants shall enter into a
13 written contract with the person that provides account control verification
14 services prohibiting that person from using the customer's online banking
15 user name or password for any purpose other than providing account
16 control verification services pursuant to this Order; or by

17 b. using deposits for account control verification by depositing at least two
18 random deposits between \$.01 and \$.99 into the customer's financial
19 account without disclosing the amounts to the customer, requiring the
20 customer to confirm the amount of each deposit, and only permitting the
21 customer to create an account with any of the Defendants when the
22 customer is able to correctly state the amount of each deposit after no
23 more than three attempts; or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 3. Engage a monitor that has been agreed to by both Defendants and Plaintiff, and establish and utilize procedures that the monitor has approved as effective to verify:
 - a. the identity of each prospective customer; and

1 direct redress to consumers is wholly or partially impracticable or that funds remain after redress
2 is completed, the Commission may apply any remaining funds for such other equitable relief
3 (including consumer information remedies) as it determines to be reasonably related to the
4 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief
5 shall be deposited into the United States Treasury as disgorgement. Defendants shall have no
6 right to challenge the Commission's choice of remedies under this Section.

7 D. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have
8 done so already, to furnish to the Commission all taxpayer identifying numbers, including Social
9 Security and employer identification numbers, which shall be used for purposes of collecting and
10 reporting on any delinquent amount arising out of Defendants' relationship with the government.

11 E. Proceedings instituted under this Section are in addition to, and not in lieu of, any other
12 civil or criminal remedies that may be provided by law, including any other proceedings that the
13 Commission may initiate to enforce this Order.

14 **III.**

15 **RESPONDING TO CONSUMER AND BUSINESS COMPLAINTS**

16 **IT IS FURTHER ORDERED** that, in connection with the advertising, marketing,
17 promotion, licensing, offering for sale, or sale of any service to create or deliver checks, in or
18 affecting commerce, Defendants, their officers, agents, servants, employees, attorneys, and those
19 persons in active concert or participation with them who receive actual notice of this Order by
20 personal service or otherwise, are permanently restrained and enjoined from:

21 A. Failing to clearly and conspicuously disclose contact information for Defendants,
22 including, but not limited to, a U.S. postal address, telephone number, and website or e-mail
23 address, in Defendants' advertising or marketing materials, on their Internet website(s), and on
24 any check that they, directly or indirectly, create or deliver;

1 B. Failing to provide an easily accessible no-cost means for a person to notify Defendants
2 that Defendants' products or services have resulted in the unauthorized use of any person's
3 financial account information; and

4 C. Failing to suspend a customer's use of any of Defendants' products or services upon
5 notice that the product or service is alleged to be involved in the unauthorized use of a person's
6 financial account information. After suspending a customer's use of the product or service,
7 Defendants shall conduct a thorough investigation of the allegation that Defendants' products or
8 services have resulted in the unauthorized use of a person's financial account information.
9 Defendants shall permanently terminate access by the customer of Defendants' products or
10 services to any of Defendants' products or services if such product or service was involved in the
11 unauthorized use of a person's financial account information. Defendants shall complete their
12 investigation of and respond to persons making such allegations within five (5) business days
13 after Defendants have become aware of them. Such response shall, at a minimum, inform the
14 person of the following:

- 15 1. Whether the person's financial account information was used to create or deliver
16 one or more checks and a list of all check numbers, dates, and amounts of any
17 checks issued;
 - 18 2. If any of Defendants' products or services were involved in the alleged
19 unauthorized use of a person's financial account information, the date that use of
20 such product or service was suspended or terminated, and an explanation if the
21 use of such product or service has not been suspended or terminated;
 - 22 3. A toll-free telephone number and contact person that the person may call and
23 reach during normal business hours to discuss the matter.
- 24
25
26

1
2
3
4
5
6
7
8
9
10
11
12

V.

COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 Defendant learns less than thirty (30) days prior to the date such action is to take place,
2 Defendants shall notify the Commission as soon as is practicable after obtaining such
3 knowledge;

4 B. One hundred eighty (180) days after the date of entry of this Order, Defendants each shall
5 provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the
6 manner and form in which they have complied and are complying with this Order. This report
7 shall include, but not be limited to:

8 1. For each Individual Defendant:

9 a. The then-current residence address, mailing addresses, and telephone
10 numbers of such Individual Defendant;

11 b. The then-current employment and business addresses and telephone
12 numbers of such Individual Defendant, a description of the business activities of
13 each such employer or business, and the title and responsibilities of such
14 Individual Defendant, for each such employer or business; and

15 c. Any other changes required to be reported under Paragraph A of this
16 Section;

17 2. For all Defendants:

18 a. A copy of each acknowledgment of receipt of this Order, obtained
19 pursuant to Section VII; and

20 b. Any other changes required to be reported under Paragraph A of this
21 Section;

22 C. For the purposes of this Order, Defendants shall, unless otherwise directed by the
23 Commission's authorized representatives, mail all written notifications to the Commission to:

24 Associate Director for Enforcement
25 Federal Trade Commission
26 601 New Jersey Ave. NW
Washington, DC 20580

1 Re: FTC v. Neovi, Inc., et al, Civil Action No. 06 CV 1952 (S.D. Cal.); and

2 D. For purposes of the compliance reporting and monitoring required by this Order, the
3 Commission is authorized to communicate directly with Defendants.

4 **VI.**

5 **RECORD KEEPING PROVISIONS**

6 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry
7 of this Order, in connection with the advertising, marketing, promotion, offering for sale, or sale
8 of any good or service to create, print, or deliver checks, Defendants, their officers, agents,
9 servants, employees, attorneys, and those persons in active concert or participation with them
10 who receive actual notice of this Order by personal service or otherwise, are permanently
11 restrained and enjoined from failing to create and retain the following records:

12 A. Accounting records that reflect the cost of goods or services sold, revenues generated,
13 and the disbursement of such revenues;

14 B. Personnel records accurately reflecting: the name, address, and telephone number of
15 each person employed in any capacity by Defendants, including as an independent contractor;
16 that person's job title or position; the date upon which the person commenced work; and the date
17 and reason for the person's termination, if applicable;

18 C. Customer files containing the names, addresses, phone numbers, dollar amounts paid,
19 quantity of items or services purchased, and description of items or services purchased, to the
20 extent such information is obtained in the ordinary course of business;

21 D. Complaint and refund request records (whether received directly, indirectly or through
22 any third party) and any responses to those complaints or requests, including, but not limited to,
23 all complaints relating to the unauthorized use of a person's personal information as set forth in
24 Section III of this Order;

25 E. Copies of all Internet websites, advertisements, or other marketing materials; and
26

1 F. All records and documents necessary to demonstrate full compliance with each provision
2 of this Order, including, but not limited to, any documents, whether prepared by or on behalf of
3 Defendants, that contradict, qualify, or call into question Corporate Defendants' compliance with
4 Sections I and III of this Order; and copies of acknowledgments of receipt of this Order required
5 by Section VII, and all reports submitted to the FTC pursuant to Section V.

6 **VII.**

7 **DISTRIBUTION OF ORDER BY DEFENDANTS**

8 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry
9 of this Order, Defendants shall deliver copies of the Order as directed below:

10 A. Corporate Defendants must deliver a copy of this Order to all of its principals, officers,
11 directors, and managers. Corporate Defendants also must deliver copies of this Order to all of its
12 employees, agents, and representatives who engage in conduct related to the subject matter of
13 the Order. For current personnel, delivery shall be within (5) days of service of this Order upon
14 Corporate Defendants. For new personnel, delivery shall occur prior to them assuming their
15 responsibilities;

16 B. For any business that any Defendant controls, directly or indirectly, or in which any
17 Defendant has a majority ownership interest, Defendants must deliver a copy of this Order to all
18 principals, officers, directors, and managers of that business. Defendants also must deliver
19 copies of this Order to all employees, agents, and representatives of that business who engage in
20 conduct related to the subject matter of the Order. For current personnel, delivery shall be
21 within (5) days of service of this Order upon Defendants. For new personnel, delivery shall
22 occur prior to them assuming their responsibilities;

23 C. For any business where any Individual Defendant is not a controlling person of the
24 business but otherwise engages in conduct related to the subject matter of this Order, such
25
26

1 Individual Defendant must deliver a copy of this Order to all principals and managers of such
2 business before engaging in such conduct; and

3 D. Defendants must secure a signed and dated statement acknowledging receipt of the
4 Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order
5 pursuant to this Section.

6 **VIII.**

7 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

8 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of
9 receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn
10 statement acknowledging receipt of this Order.

11 **IX.**

12 **RETENTION OF JURISDICTION**

13 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
14 purposes of construction, modification and enforcement of this Order.

15 **IT IS SO ORDERED.**

16
17 DATED: January 7, 2009

Janis L. Sammartino
18 Honorable Janis L. Sammartino
19 United States District Judge
20
21
22
23
24
25
26