

FEB 26 2009

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. MCCORMACK, CLERK
By: *[Signature]*
DEP. CLERK

e360INSIGHT, LLC

PLAINTIFF

vs.

NO. CV-4:09-W-139-BSM

CHOICEPOINT PRECISION MARKETING
LLC

DEFENDANT

ANSWER TO COMPLAINT

Defendant, Choicepoint Precision Marketing LLC ("Choicepoint"), by its attorneys, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., for its Answer to Plaintiff, e360Insight, LLC's ("e360"), Complaint, states as follows:

1. Choicepoint admits that e360 is an Illinois limited liability company with its principal office located at 500 Sumac Road, Highland Park, Illinois 60035.

2. Choicepoint admits that it is a Georgia limited liability company with its principal office located at 1000 Alderman Drive, Alpharetta, Georgia 30005. Choicepoint further admits that its agent for service of process is Corporation Service Company, 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock, Arkansas 72201. Choicepoint further admits that it formerly was a corporation but converted into a limited liability company.

3. Choicepoint admits that a copy of the Data License Agreement is attached to e360's Complaint as Exhibit "A". Choicepoint affirmatively asserts that the Data License Agreement speaks for itself. Choicepoint further affirmatively asserts that pursuant to the forum selection clause contained in the Data License Agreement, the parties have submitted to the jurisdiction and venue of the United States District Courts for the Eastern District of Arkansas. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332(a), and this case

has been properly removed from the Circuit Court of Pulaski County pursuant to 28 U.S.C. § 1441(a). Choicepoint denies the remaining allegations in paragraph 3 of e360's Complaint.

4. Choicepoint admits that a copy of the Data License Agreement is attached to e360's Complaint as Exhibit "A". e360 attempts to paraphrase the terms of the Data License Agreement. Choicepoint affirmatively asserts that the Data License Agreement speaks for itself. Choicepoint admits the allegations in paragraph 4 to the extent they are consistent with the Data License Agreement and denies those that are inconsistent. Choicepoint denies any and all remaining allegations in paragraph 4 of e360's Complaint.

5. Choicepoint affirmatively asserts that the Data License Agreement speaks for itself. Choicepoint admits the allegations in paragraph 5 to the extent they are consistent with the Data License Agreement and denies those that are inconsistent. Choicepoint denies any and all remaining allegations in paragraph 5 of e360's Complaint.

6. e360 attempts to paraphrase the terms of the Data License Agreement. Choicepoint affirmatively asserts that the Data License Agreement speaks for itself. Choicepoint admits the allegations in paragraph 6 to the extent they are consistent with the Data License Agreement and denies those that are inconsistent. Choicepoint denies any and all remaining allegations in paragraph 6 of e360's Complaint.

7. Choicepoint denies the allegations in paragraph 7 of e360's Complaint. Choicepoint affirmatively asserts that the lawsuit filed by John Ferron in the Court of Common Pleas of Franklin County, Ohio, Case No. 07 CVH 09 12775, the lawsuit filed by Mr. Silverstein in the U.S. District Court, Central District of California, Case No. 07 2835 CAS, and the complaint drafted by Mr. Ferguson for filing in Washington Court, all speak for themselves. Choicepoint further affirmatively asserts that pursuant to the Data License Agreement, it is not

required to indemnify e360 for the activities of e360, as alleged by Mr. Ferron, Mr. Silverstein, and/or Mr. Ferguson.

8. Choicepoint denies the allegations in paragraph 8 of e360's Complaint. Choicepoint affirmatively asserts that the Data License Agreement speaks for itself. Choicepoint also affirmatively asserts that the lawsuit filed by John Ferron in the Court of Common Pleas of Franklin County, Ohio, Case No. 07 CVH 09 12775, the lawsuit filed by Mr. Silverstein in the U.S. District Court, Central District of California, Case No. 07 2835 CAS, and the complaint drafted by Mr. Ferguson for filing in Washington Court, all speak for themselves. Choicepoint further affirmatively asserts that pursuant to the Data License Agreement, it is not required to indemnify e360 for the activities of e360, as alleged by Mr. Ferron, Mr. Silverstein, and/or Mr. Ferguson.

9. Choicepoint admits that a copy of Meredith Sidewater's letter is attached to e360's Complaint as Exhibit "B". e360 attempts to paraphrase the contents of Meredith Sidewater's letter. Choicepoint affirmatively asserts that Meredith Sidewater's letter speaks for itself. Choicepoint admits the allegations in paragraph 9 to the extent they are consistent with Meredith Sidewater's letter, and denies those that are inconsistent. Choicepoint denies any and all remaining allegations in paragraph 9 of e360's Complaint.

10. e360 attempts to paraphrase the CAN-SPAM Act of 2003. Choicepoint affirmatively asserts that the CAN-SPAM Act of 2003 speaks for itself. Choicepoint denies the remaining allegations in paragraph 10 of e360's Complaint.

11. e360 attempts to paraphrase the terms of the Data License Agreement. Choicepoint affirmatively asserts that the Data License Agreement speaks for itself. Choicepoint denies the allegations in paragraph 11 of e360's Complaint.

12. Choicepoint denies the allegations in paragraph 12 of e360's Complaint.

13. Choicepoint restates and incorporates herein its responses to the allegations set forth in paragraphs 1 through 12, as if stated herein word for word.

14. e360 attempts to paraphrase the terms of the Data License Agreement. Choicepoint affirmatively asserts that the Data License Agreement speaks for itself. Choicepoint admits the allegations in paragraph 14 to the extent they are consistent with the Data License Agreement and denies those that are inconsistent. Choicepoint denies any and all remaining allegations in paragraph 14 of e360's Complaint.

15. Choicepoint affirmatively asserts that the Data License Agreement speaks for itself. Choicepoint admits the allegations in paragraph 15 to the extent they are consistent with the Data License Agreement and denies those that are inconsistent. Choicepoint denies any and all remaining allegations in paragraph 15 of e360's Complaint.

16. Choicepoint denies the allegations in paragraph 16 of e360's Complaint. Choicepoint affirmatively asserts that e360 failed to give Choicepoint prompt notice of the *Silverstein* lawsuit filed against e360, as required by the Data License Agreement, and therefore, Choicepoint's indemnification obligation, if any existed, was waived.

17. Choicepoint denies the allegations in paragraph 17 of e360's Complaint.

18. Responding to e360's "Wherefore" paragraph, Choicepoint denies that e360 is entitled to the relief it seeks.

19. Choicepoint denies any and all allegations not specifically admitted herein.

AFFIRMATIVE DEFENSES

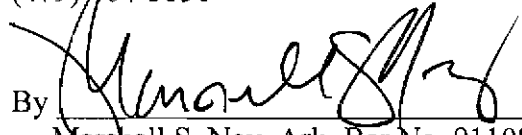
20. Choicepoint pleads affirmatively pursuant to Fed. R. Civ. P. 12(b)(6) that e360 has failed to state a claim upon which relief can be granted.

21. Choicepoint pleads affirmatively pursuant to Fed. R. Civ. P. 8(c) the defenses of statute of limitations, estoppel, laches, set-off, and waiver.

WHEREFORE, Choicepoint prays that e360's Complaint be dismissed with prejudice, for its costs herein expended, including reasonable attorneys' fees, and for all other proper relief to which it may be entitled.

Respectfully submitted,

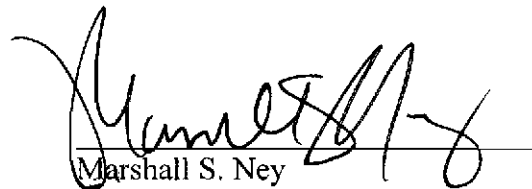
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By 
Marshall S. Ney, Ark. Bar No. 91108
Jenny T. Garrett, Ark. Bar No. 2008034

CERTIFICATE OF SERVICE

I, Marshall S. Ney, certify that a copy of the foregoing was sent via first-class mail on this 25 day of February, 2009, to the following:

Mr. Stephen B. Niswanger
Mr. Alexander Cale Block
NISWANGER LAW FIRM, PLLC
#5 Innwood Circle, Suite 110
Little Rock, AR 72211


Marshall S. Ney