

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

In the Matter of

CARE.COM, INC.

SUPERIOR COURT



**ASSURANCE OF DISCONTINUANCE PURSUANT TO G. L. 93A, § 5**

**I. Introduction**

Pursuant to the provisions of Massachusetts General Laws, chapter 93A, the Commonwealth of Massachusetts, by its Attorney General, Maura Healey (“Commonwealth” or “Attorney General”), has conducted an investigation into the acts and practices of Care.com, Inc. (“Care.com”) in connection with the matters set forth herein.

Based on that investigation, the Attorney General alleges that Care.com has violated the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2, and associated regulations, an allegation which Care.com denies.

The Attorney General has conferred in good faith with Care.com and its attorneys and the parties have agreed to resolve the Commonwealth’s allegations through this Assurance of Discontinuance (“Assurance”), pursuant to G.L. c. 93A, § 5, in lieu of a civil action under G.L. c. 93A.

**II. Definitions**

1. Throughout this Assurance, the “Relevant Period” shall mean from January 1, 2013 until February 11, 2016.

2. Throughout this Assurance, the “Effective Date” shall be the date this Assurance is filed in Superior Court.

3. Other definitions may appear throughout this Assurance as necessary.

### **III. Background**

4. The Attorney General alleges the following facts related to Care.com and its background check offerings.

5. Care.com is an active, publicly traded, Delaware corporation, formed in October 2006 and headquartered at all relevant times in Waltham, Massachusetts.

6. Among other things, Care.com operates a website that allows “Care Seekers”—that is, those looking for someone to care for their children, pets, elderly relatives, or household—to browse potential “Care Providers” in their geographic area. Care.com allows Care Seekers to view profiles that Care Providers have created, which may include information such as name, credentials, work experience, and other information to assist Care Seekers in identifying potential Care Providers. For various fees paid by either the Care Seeker or Care Provider, or both, to Care.com, Care.com provides access to information on its website for the purpose of facilitating the ability of Care Seekers to connect with potential Care Provider(s).

7. As part of the services identified in Paragraph 6, during the Relevant Period, Care.com offered its members the option to purchase various background check products performed by third party consumer reporting agencies. These background check products were described as a means for Care Seekers to view information regarding, among other things, the criminal history, driving record, and/or sex offender status of potential Care Providers, depending on the type of check purchased.

8. During the Relevant Period, Care.com engaged Sterling Infosystems, Inc. (“Sterling”) and its predecessors to provide two particular background check products, which were called the “Preferred Background Check” and the “Preferred+ Background Check”.

9. During the Relevant Period, the standard price for a Preferred Background Check was \$59, and the standard price for a Preferred+ Background Check was \$79, exclusive of taxes.

10. Both the Preferred Background Check and the Preferred+ Background Check included a search that went by multiple names, including “State/county Criminal Records Search”, “State/county Courthouse Records Search”, or “County Courthouse Records Search”. For ease of reference, the remainder of this Assurance shall refer to this component as the “County Criminal Search.”

11. During the Relevant Period, the County Criminal Search was marketed on Care.com’s website as “a search of criminal records in the states and/or counties the candidate has resided over the last seven years. The majority of records returned are convictions; [the County Criminal Search] generally does not include charges or arrests that do not result in a conviction.”

12. To conduct the County Criminal Search, Sterling used both electronic interfaces with certain courts around the country and a network of court runners to physically go to courthouses and search records, where necessary.

13. For the Preferred and Preferred+ Background Checks conducted in Massachusetts, neither the County Criminal Search nor any other component of the Preferred or the Preferred+ Background Check included a request for Criminal Offender Record Information (“CORI”) maintained by the Department of Criminal Justice Information Services of the Massachusetts Executive Office of Public Safety and Security.

14. During the Relevant Period, County Criminal Searches performed on Care Providers who reportedly resided in Massachusetts during the preceding seven years did not include a search of the criminal records of every courthouse in each Massachusetts county in which the Care Provider reportedly resided. In Massachusetts, the County Criminal Search searched criminal records of the superior court for each such county. It generally did not search records of the district courts located in each such county.

15. Accordingly, the County Criminal Search did not review the records of all district courts in the Massachusetts counties Care Providers reportedly had lived in the preceding seven years, which records may have contained criminal convictions of Care Providers.

16. The Attorney General alleges that this advertising by Care.com, described above in Paragraphs 7–15, constituted a violation of G. L. c. 93A, § 2, and its associated regulations, for failing to sufficiently inform Massachusetts consumers of material information regarding the scope of the Massachusetts County Criminal Searches.

17. Care.com denies the Attorney General’s allegations as contained in the foregoing paragraphs and vigorously disputes any claim that its business conduct was in any way unfair or deceptive, that it has violated any Massachusetts laws or regulations in connection with the foregoing, and denies that it engaged in any wrongdoing.

18. Without admitting to the Attorney General’s allegations or to any violation of law, Care.com has voluntarily and knowingly entered into this Assurance solely in order to avoid the time, expense, and uncertainty of litigation.

#### **IV. Assurances**

19. Should Care.com continue to sell, offer, promote, or gift products that include a County Criminal Search, or a product that includes a search of county-level criminal records in

Massachusetts but does not search for criminal records in each district and superior court for a county in which a caregiver resided during the time period covered by the search, Care.com shall provide Massachusetts consumers with a disclosure (“Consumer Notice”) that, at a minimum, informs consumers, clearly and conspicuously, before they order any such product, of the items below, as presently satisfied for the County Criminal Search by the agreed upon disclosure found in Appendix A:

- a. Each of the specific types of criminal records searched and excluded from the search as part of the product, including the following information about each of such criminal record types:
  - i. Geographic reach (e.g., records limited to certain counties and/or courthouses within the counties);
  - ii. A description of the types of crimes that may not be searched;
  - iii. Duration of look-back period (e.g., records searched for the past 7 years);  
and
  - iv. Court types (e.g., state superior, state district, municipal court).
- b. The fact that the consumers may receive additional criminal records through the CORI system (maintained by the Department of Criminal Justice Information Services);
- c. A link to the CORI website;
- d. The fees for a CORI check; and
- e. If the consumer is conducting a potential background check for (i) a child care provider or (ii) a home health aide for an elderly or disabled person, the fact that, and a description of how, the CORI check to which they are entitled may be more

comprehensive than the criminal records offered through Care.com. Also, with respect to subcategories (i) and (ii), Care.com shall provide a web link to the forms necessary to request such CORI checks, currently found at <https://www.mass.gov/how-to/cori-forms-and-information>.

20. The Consumer Notice shall be displayed separate and apart from other policies or notices.

21. In the above notification requirements for the Consumer Notice, the phrase “before they order any such product” shall mean that Care.com must have in place reasonable measures designed to ensure, through technological means or otherwise, that it displays to each consumer it believes is a resident of the Commonwealth of Massachusetts the required information before ordering the product, regardless of whether a consumer pays for the product at the time of ordering. “Before they order any such product” shall not include providing information on a web page (or other place) where a consumer would not be required to view it.

22. The attached **Appendix A** represents a disclosure agreed to by the parties that meets the requirements for the Consumer Notice required specifically for the County Criminal Search as of the date this Assurance is executed by both parties.

23. Should CORI processes, fees, systems, or websites change in a manner that would impact the requirements for the Consumer Notice, the Attorney General’s office shall permit Care.com a reasonable amount of time to modify the Consumer Notice accordingly.

24. Should Care.com desire to modify (1) the manner of disclosing the Consumer Notice or (2) the material terms of the language contained in the Consumer Notice, it shall, for a period of five (5) years, notify the Attorney General of the proposed modification at least

fourteen (14) days before such a modification is to occur. Any changes to the Consumer Notice shall comply with the requirements set forth in Paragraph 19.

25. On a yearly basis, for a period of five (5) years, Care.com shall perform an audit of each background check product it markets to Massachusetts consumers that contains a County Criminal Search (or a search that includes a search of county-level criminal records in Massachusetts but does not search for criminal records in each district and superior court for a county in which a caregiver resided during the time period covered by the search), to compare each product with the representations made to Massachusetts consumers about such a product. The first such audit shall be conducted within one hundred twenty (120) days of the Effective Date. Within thirty (30) days of Care.com's completion of each audit, Care.com shall report the results of the audit to the Attorney General. For each relevant background check product, such report shall include: a list of the courts and databases currently searched to identify Massachusetts criminal record information, the duration of the look-back period for each such court or database, and representative notices and advertisements provided or available to Massachusetts consumers for each such product. Within thirty (30) days of Care.com's completion of each audit, Care.com shall report to the Attorney General the remedial actions that it seeks to take (if any) in response to said audit.

26. Within ten (10) days of the Effective Date, Care.com shall cause a true and correct copy of the Assurance to be given to all officers, directors, and employees of Care.com, who, in Care.com's determination, are principally responsible for ensuring compliance therewith.

27. Within one hundred twenty (120) days of the Effective Date, Care.com shall provide confirmatory documentation satisfactory to the Attorney General that all changes to its background check sales and disclosures required by this Assurance have been made.

## **V. Payments**

### **A. Restitution**

28. Care.com shall reserve **\$126,820.50** as restitution to be distributed to Care Seekers who purchased Preferred or Preferred+ Background Checks during the Relevant Period, to be distributed evenly per background check.

29. Within sixty (60) days of the Effective Date, Care.com shall engage a third party payment administrator (“Administrator”) that is approved by the Attorney General prior to such engagement, to facilitate the distribution of the restitution described in Paragraph 28.

30. Within ten (10) days of engaging the Administrator, Care.com shall deliver to the Administrator a list of all consumers eligible to receive restitution under Paragraph 28 (“Consumer List”), along with all other information reasonably necessary for the Administrator to discharge its duties under this Assurance. This Consumer List shall also be transmitted to the Attorney General simultaneously.

31. Within ninety (90) days of the Effective Date, Care.com shall direct the Administrator to deliver via email to every consumer on the Consumer List, a letter (“Consumer Letter”) that notifies the consumer of this Assurance and provides a link to a website on which is posted a copy of the Consumer Letter and an online form in which consumers can provide updated postal mail address information to which a refund check should be sent (“the Website”). The Website shall contain a toll free phone number for consumers to call to answer any questions. Thirty (30) days following distribution of the email notice, Care.com shall direct the Administrator to distribute refund checks to every consumer on the Consumer List using, if applicable, the postal mail address supplied by consumers via the Website. For those Consumers who do not verify their postal mailing address, Care.com shall direct the Administrator to use the



postal mail address last on file, subject to any updates identified by the Administrator following performance of a postal service National Change of Address (“NCOA”) search. The refund checks shall be made payable to each consumer for the amount determined under Paragraph 28 and shall be valid for ninety (90) days. The form and substance of the Consumer Letter have been agreed to by the parties and a copy of the Consumer Letter, along with a hyperlink to the Website which will display the Frequently Asked Questions (“FAQs”) shall accompany the refund checks.

32. For a period of one-hundred fifty (150) days following the engagement of the Administrator, Care.com shall direct the Administrator to use commercially available credit header searches to attempt to complete or correct postal mail address information for consumers on the Consumer List who the Administrator has been unable to contact and to send a new refund check, where applicable, using consumers’ updated information.

33. Beginning ninety (90) days after the Effective Date, and at least every thirty (30) days until two hundred ten (210) days following the Effective Date, Care.com shall direct the Administrator to distribute to the parties a report containing the total number of checks cashed and not cashed, and the total number of Consumer Letters that have been returned to the Administrator.

34. Care.com shall direct the Administrator to, upon request of the Commonwealth, provide all documentation and information reasonably necessary to confirm compliance with this Assurance.

35. After two hundred ten (210) days following the Effective Date, but not more than two hundred twenty (220) days following the Effective Date, Care.com shall direct the Administrator to distribute any uncashed or unclaimed restitution funds to the Commonwealth

for deposit in the State Treasury as unclaimed property.

36. Care.com shall pay all fees and costs of the Administrator in connection with this Assurance, and all fees and costs associated with the ascertainment, distribution, and notification of consumers of the restitution identified in Paragraph 28.

37. The Commonwealth shall have the right to remove and replace the Administrator for failing to comply with the terms of the Assurance or otherwise acting improperly.

38. In no event shall the Commonwealth have any liability to Care.com, the Administrator, or Massachusetts consumers in connection with the provision of restitution identified in Paragraphs 28–37.

B. Other Payments

39. Within three (3) business days of its execution of this Assurance, Care.com shall pay the Commonwealth a total of **\$355,000** by certified or cashier’s check made payable to the “Commonwealth of Massachusetts” and delivered to Jared Rinehimer, Assistant Attorney General, Consumer Protection Division, One Ashburton Place, 18th Floor, Boston, MA 02108.

40. At her sole discretion, the Attorney General may distribute the payment described in Paragraph 39 in any amount, allocation or apportionment and for any purpose permitted by law, including but not limited to: (a) payments to or for consumers; and/or (b) use by the Attorney General in the facilitation of this Assurance; and/or (c) payments to the General Fund of the Commonwealth of Massachusetts; and/or (d) payments to the Local Consumer Aid Fund established pursuant to G.L. c. 12, § 11G; and/or (e) for programs or initiatives designed to improve: background check services, public knowledge regarding obtaining safe or high-quality child care, access to safe or high-quality child care, and/or the quality of child care.

41. No payment made pursuant to this Assurance shall be characterized by either party as a penalty, fine, or forfeiture.

## **VI. Miscellaneous Provisions**

42. This Assurance shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

43. This Assurance contains the complete agreement between the parties. This Assurance supersedes all prior communications, discussions, or understandings, if any, of the parties, whether written or oral. This Assurance can be modified or supplemented only by written memorandum signed by both parties.

44. Care.com is represented by and has consulted with counsel in connection with the decision to enter into this Assurance.

45. This Assurance does not resolve or bar any private causes or rights of action, nor does it resolve any potential or realized cause of action against any party other than Care.com.

46. This matter may, at any time, be reopened by the Attorney General for further proceedings in the public interest under G. L. c. 93A, § 5.

47. Violation of this Assurance shall be prima facie evidence of a violation of G. L. c. 93A, § 2.

48. Consent to this Assurance does not constitute an approval or sanction by the Commonwealth of any of Care.com's business acts or practices, and Care.com shall not make a representation to the contrary.

49. Should any of the provisions of this Assurance be declared by a court of competent jurisdiction to be unlawful, the remaining provisions of the Assurance shall remain in full force and effect.

50. All notices and documents required by this Assurance shall be provided in writing to the parties as follows, unless one party notifies the other in writing of a new address or representative:

a. If to the Commonwealth:

Abigail Taylor  
Director and Assistant Attorney General  
Child and Youth Protection Unit  
Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Fl.  
Boston, MA 02108  
(617) 727-2200  
abigail.taylor@state.ma.us

b. If to Care.com

William "BJ" Trach  
Latham & Watkins, LLP  
200 Clarendon St.  
Boston, MA 02116  
617-880-4514  
william.trach@lw.com

51. Any public, written statement made by the Attorney General concerning this Assurance shall include a copy of this Assurance or shall include a web link to an electronic copy of this Assurance.

COMMONWEALTH OF MASSACHUSETTS  
MAURA HEALEY  
ATTORNEY GENERAL

By: Abigail Taylor  
Abigail Taylor (BBO # 670648)  
Assistant Attorney General  
Child and Youth Protection Unit

Jared Rinehimer (BBO #684701)  
Assistant Attorney General  
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abigail.taylor@state.ma.us  
jared.rinehimer@state.ma.us

Dated: 2/21/2018

CARE.COM, INC.

By: David Krupinski  
David Krupinski  
Co-Founder & Chief Technology Officer

Dated: 2/17/2018

## Appendix A

The following disclosure shall be shown to prospective background check purchasers with a Massachusetts ZIP code on file on a separate page with no other policies displayed before any background check purchase completion that includes a Criminal County Search:

### **IMPORTANT INFORMATION FOR MASSACHUSETTS CUSTOMERS**

**The Criminal County Search in Massachusetts may not reveal a caregiver's entire criminal history.** The background check that you have chosen includes a search of the Superior Court records and the records of a single District Court for each Massachusetts county (except Nantucket) in which a caregiver is believed to have lived over the past seven years. The background check will not return records maintained in other District Courts within such counties, or other state courts within Massachusetts. District Courts keep the vast majority of county misdemeanor records as well as many felony records. [Here](#) is a list of types of cases that may be heard in a District Court, and therefore might not be searched.

Massachusetts maintains its own centralized source of criminal record information, the Criminal Offender Record Information (“CORI”) system, from which you may be eligible to obtain a check that contains more Massachusetts criminal records. In particular, a comprehensive “Required 2” CORI search may be accessible to you, if you are looking for a child care provider or a home health aide for an elderly or disabled person. The CORI system is statewide and includes criminal record information from more District Courts and Superior Courts than the Criminal County Search you have chosen. Care.com is not currently able to assist you with obtaining CORI reports, but *you can request one directly for a child care provider or a home health aide through the forms accessible [here](#). These Required 2 CORI checks cost \$25 each and require the consent and notarized signature of your prospective caregiver.*

Please note that CORI does not include criminal record information outside of Massachusetts. If a caregiver lived outside of Massachusetts during the past seven years, the criminal record check you selected on Care.com will search for some criminal record information outside of Massachusetts.