



NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
ONE STATE STREET  
NEW YORK, NEW YORK 10004

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In the Matter of: : No. 2020-0030-C  
FIRST AMERICAN TITLE INSURANCE COMPANY, :  
Respondent. :

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**SECOND AMENDED STATEMENT OF CHARGES AND NOTICE OF HEARING**

TO THE ABOVE-NAMED RESPONDENT:

PLEASE TAKE NOTICE that a hearing will be held at the office of the New York State Department of Financial Services (the “Department” or “DFS”), One State Street, New York, New York 10004, 6th Floor, on a date to be determined by the presiding Administrative Hearing Officer, and continuing thereafter day to day as determined by the Department before a Hearing Officer to be appointed by the Superintendent of Financial Services (the “Superintendent”), to determine whether RESPONDENT has committed violations of §§ 500.02, 500.03, 500.04, 500.07, 500.09, 500.10, 500.14, 500.15 and 500.17 of Part 500 of Title 23 of the New York Codes, Rules, and Regulations, also referred to as the Department’s “Cybersecurity Requirements for Financial Services Companies” (hereinafter, 23 NYCRR Part 500 or the “Cybersecurity Regulation”), whether violations should be found for Respondent’s persistent

failures to safeguard customer information, and whether civil monetary penalties shall be imposed and other appropriate relief be granted as a result of such findings.

### OVERVIEW

1. For more than four years, First American Title Insurance Company (“First American” or “Respondent”) exposed tens of millions of documents that contained consumers’ sensitive personal information including bank account numbers and statements, mortgage and tax records, Social Security numbers, wire transaction receipts, and drivers’ license images.

2. From at least October 2014 through May 2019, due to a known vulnerability on Respondent’s public-facing website (the “Vulnerability”), these records were available to anyone with a web browser.

3. The Uniform Resource Locator (the “URL”) of a web application is the specific web address that makes it possible to request a document, file, video, or other resource maintained on the web. By permitting a URL on its public website to be vulnerable to manual manipulation, or re-writing, Respondent knowingly laid bare millions of personal datapoints of its customers from hundreds of First American consumer files for access without any login or authentication requirements.

4. The Vulnerability was first introduced during an application software update in May 2014, and went undetected for years.

5. Respondent’s mishandling of its own customers’ data was compounded by its willful failure to remediate the Vulnerability, even after it was discovered by a penetration test in December 2018.<sup>1</sup> Remarkably, Respondent instead allowed unfettered access to the personal

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<sup>1</sup> A penetration test is an authorized simulated cyberattack on a computer system, performed to evaluate the security system, including the potential for unauthorized parties to gain access to the system's features and data.

and financial data of millions of its customers for six more months until the breach and its serious ramifications were widely publicized by a nationally recognized cybersecurity industry journalist.

THE ROLE AND JURISDICTION OF THE  
DEPARTMENT OF FINANCIAL SERVICES

6. The Department of Financial Services is the insurance regulator in the State of New York. The Superintendent of Financial Services is responsible for ensuring the safety and soundness of New York’s insurance industry and promoting the reduction and elimination of fraud, abuse, and unethical conduct with respect to insurance participants.

7. The Superintendent has the authority to conduct investigations, bring enforcement proceedings, levy monetary penalties and order injunctive relief against parties who have violated the relevant laws and regulations.

8. Among her many obligations to the public is the Superintendent’s consumer protection function, which includes the protection of individuals’ private and personally sensitive data from careless, negligent, or willful exposure by licensees of the Department.

9. To support this critical obligation to consumers, the Superintendent’s Cybersecurity Regulation places on all DFS-regulated entities (“Covered Entities”), including First American, an obligation to establish and maintain a cybersecurity program designed to protect the confidentiality, integrity, and availability of its Information Systems and its customers’ Nonpublic Information, as defined in 23 NYCRR §§ 500.01(e) and 500.01(g), respectively.

10. To that end, the DFS Cybersecurity Regulation requires Covered Entities to implement and maintain cybersecurity policies and procedures to address, to the extent applicable, consumer data privacy and other consumer protection issues with effective controls,

secure access privileges, thorough and routine cybersecurity risk assessments, comprehensive training and monitoring for all employees and other users, and well-grounded governance processes to ensure senior attention to these important protections.

11. Every Covered Entity is required to base its cybersecurity policies and procedures on risk assessments to ensure ongoing evaluation of the risks that continuously threaten the security of Nonpublic Information, including sensitive personal information, and to further safeguard the Information Systems that are accessed or held by Third Party Service Providers. Encryption and multifactor authentication are further controls required under the Cybersecurity Regulation to ensure that Covered Entities thoroughly protect their customers' private data.

12. Respondent, a Nebraska-based stock insurance company, is a licensee of the Superintendent authorized to write title insurance in New York. As such, Respondent is a "Covered Entity" under 23 NYCRR § 500.01(c) and is therefore subject to the requirements of the Cybersecurity Regulation.

13. Nonpublic Information ("NPI") means all electronic information that is not publicly available and is: (1) Business-related information of a Covered Entity the tampering with which, or unauthorized disclosure, access or use of which, would cause a material adverse impact to the business, operations or security of the Covered Entity; (2) Any information concerning an individual which because of name, number, personal mark, or other identifier can be used to identify such individual, in combination with any one or more of the following data elements: (i) social security number, (ii) drivers' license number or non-driver identification card number, (iii) account number, credit or debit card number, (iv) any security code, access code or password that would permit access to an individual's financial account, or (v) biometric records; and (3) Any information or data, except age or gender, in any form or medium created

by or derived from a health care provider or an individual and that relates to (i) the past, present or future physical, mental or behavioral health or condition of any individual or a member of the individual's family, (ii) the provision of health care to any individual, or (iii) payment for the provision of health care to any individual.

14. Pursuant to Section 404 of the Financial Services Law, the Consumer Protection and Financial Enforcement Division of the Department investigated whether First American was complying with the Superintendent's Cybersecurity Regulation, 23 NYCRR Part 500, which requires that all Department-regulated entities, including First American, have a cybersecurity program that, among other things, protects customer NPI. After such investigation, the Department hereby commences an administrative proceeding alleging that First American has committed the violations described below.

#### FACTUAL ALLEGATIONS

##### Respondent's Business Activities

15. Title insurance policies insure the interests of owners or lenders against defects in the title to real property. These defects include adverse ownership claims, liens, encumbrances, or other matters affecting title. Respondent is the second largest title insurance provider in the United States. In 2019, its Title Insurance and Services segment accounted for 91.5% of Respondent's \$6.2 billion in consolidated revenue.

16. When a customer seeks to purchase title insurance, Respondent collects personal information from multiple sources in connection with the insurance application. The customer submits NPI in the form of applications and settlement or financial statements. Others involved in the transaction on behalf of the title customer, such as the real estate agent, lender, escrow, or settlement agent and attorney, also submit documents containing sensitive customer information.

In performing the ensuing title search, Respondent obtains, from its own or others' proprietary databases, documents that may also contain personal information such as appraisals, credit reports, escrow account balances, and account numbers. Respondent might also collect documents from public records such as tax assessments and liens to include as part of a title insurance package (the "package" or "title package").

17. Therefore, in the regular course of its business, Respondent collects, stores, and transmits the personal information of millions of buyers and sellers of real estate in the U.S. each year. Respondent stores this information in its main document repository, the FAST image repository, also known as "FAST." Documents can be loaded into FAST by Respondent's employees assigned to any of Respondent's business units. Respondent uses documents stored in FAST to transact title insurance and settlement orders.

18. FAST includes tens of millions of documents with sensitive personal information, such as social security numbers, bank account and wiring information, and mortgage and tax records. In April 2018, for example, FAST contained 753 million documents, 65 million of which had been tagged by Respondent's employees as containing NPI. A random sampling of 1,000 documents that were not tagged showed that 30% of those documents also contained NPI. As of May 2019, FAST contained over 850 million documents.

19. Respondent also created and maintains an application on its network known as EaglePro. EaglePro is a web-based title document delivery system that allows title agents and other Respondent employees to share any document in FAST with outside parties. EaglePro is intended to be used by title agents and others to share the title package with the parties to a real estate transaction. After a party to or a participant in a transaction selects documents from FAST to be shared with another participant of a real estate transaction, EaglePro emails the recipient a

link to a website that allows him or her to access those documents. Anyone who had the link or the URL for the website could access the package without login or authentication.

#### Respondent's Data Exposure

20. In October 2014, Respondent updated the EaglePro system in a manner that gave rise to the Vulnerability. The URL for each website shared via EaglePro included an ImageDocumentID number, and each document in FAST was assigned a sequentially numbered ImageDocumentID. By changing the ImageDocumentID number in the URL by one or more digits, anyone could view the document corresponding to the revised ImageDocumentID. As a result, by simply typing in any ImageDocumentID, any document in FAST could be accessed regardless of whether the viewer had authorized access to those documents. Until May 2019, the URLs shared via EaglePro had no expiration date.

21. In other words, more than 850 million documents were accessible to anyone with a URL address providing access to a single document in the EaglePro-generated website. The Vulnerability thus led to exposure of a staggering volume of personal and financially sensitive documents, any number of which could be used by fraudsters to engage in identity theft and even outright theft of assets. Moreover, such theft could occur without individuals knowing their information had been stolen from Respondent.

22. In December 2018, First American's Cyber Defense Team discovered the EaglePro Vulnerability during a penetration test of the EaglePro application. The Cyber Defense Team's role was to conduct penetration tests on Respondent's applications — tests that simulated a cyberattack — to identify vulnerabilities that could be exploited.

23. In an email on December 17, 2018, a member of the Cyber Defense Team alerted the EaglePro Application Development team to the existence of the EaglePro Vulnerability,

reporting “recently discovered important findings during the reconnaissance phase of our current penetration test of the EaglePro application that should be addressed.” The email went on to describe the Vulnerability. Recognizing the urgency of the situation, the manager of the Application Development team responsible for EaglePro replied that the Vulnerability should be “address[ed] as soon as possible.”

24. On January 11, 2019, the Cyber Defense Team distributed the final report of the EaglePro penetration test. The report described the Vulnerability in detail, including pages of screenshots demonstrating how the EaglePro website URL could be manipulated to display sensitive documents not intended for widespread viewing. The penetration test report also showed that more than 5,000 documents exposed by EaglePro had been subjected to Google search engine indexing, *i.e.*, collection and storage of data by Google to facilitate later information retrieval in the course of open-source Google searches by the public. Among the key findings in the Cyber Defense Team's report was the following warning: “using standard Internet search methods *we were able to bypass authentication to retrieve documents that were found using Google searches*” (emphasis in the original). The Cyber Defense Team reviewed 10 documents exposed by the Vulnerability, and, although none contained NPI, the Cyber Defense Team strongly recommended that the application team investigate further and determine whether sensitive documents were exposed. Despite this clear warning, this recommendation was ignored, and Respondent failed to conduct follow-up investigation.

25. Even more alarming, in the six months following discovery of the Vulnerability, Respondent failed to correct the Vulnerability even though hundreds of millions of documents were exposed. This lapse was caused by a cascade of errors that occurred substantially due to

flaws in Respondent's vulnerability remediation program. Some of these flaws are illustrated below:

a. Respondent grossly underestimated the level of risk associated with the Vulnerability. During interviews with the Department, several Respondent employees revealed that the Vulnerability was not addressed, in part, because the problem was erroneously classified as "medium severity." The "medium severity" classification, in turn, rested on the mistaken belief that EaglePro could not transmit NPI. Respondent's Chief Information Security Officer ("CISO"), the senior most employee responsible for the security of Respondent's Information Systems, testified that she believed that data accessible in EaglePro was publicly available, and therefore did not constitute NPI. However, anyone with the barest familiarity with EaglePro understood that the application could be used to distribute any documents contained in FAST, including documents of a highly sensitive nature that clearly constituted NPI. Nonetheless, this error was never corrected.

b. Respondent failed to follow its own cybersecurity policies. Respondent's policies required a security overview report for each application and a risk assessment for data stored or transmitted by any application. No security overview or risk assessment was performed for EaglePro.

c. Respondent conducted an unacceptably minimal review of exposed documents, and thereby failed to recognize the seriousness of the security lapse. The Cyber Defense Team reviewed only 10 documents out of the hundreds of millions of documents exposed. While conducting such a preposterously minimal review, the Cyber Defense Team found no NPI in the 10 documents reviewed and thus failed to recognize the seriousness of the

situation. As a result, the team erroneously classified the Vulnerability as merely “medium severity.”

d. Respondent failed to heed advice proffered by its own in-house cybersecurity experts. The Cyber Defense Team recommended that the EaglePro application team conduct further review to determine if sensitive documents were exposed by the Vulnerability. No such review was conducted. Moreover, the application team knew that EaglePro could distribute the highly sensitive documents warehoused in FAST but nonetheless conducted no further investigation of the Vulnerability.

e. An apparent administrative error compounded the delay in the timeframe for remediating the Vulnerability. The director of the Cyber Defense Team inadvertently caused additional delay in the remediation by accidentally re-classifying the vulnerability from “medium” to “low” severity when it was entered into Respondent’s vulnerability tracking system in January 2019. Classified as “low severity,” Respondent’s policy inaccurately allowed 90 days for the remediation of the Vulnerability.

f. Respondent failed to adhere to its internal policies, and delayed addressing the Vulnerability for six months. Even if Respondent had correctly classified the Vulnerability, which Respondent failed to do by deeming it “low severity,” Respondent failed to remediate within 90 days as the policy required even for “low severity ” vulnerabilities. Instead, Respondent failed to address the Vulnerability for more than five months after its discovery, and even then, only after the Vulnerability was revealed by a media outlet. This failure occurred despite discovery of the Vulnerability, widespread internal circulation of a detailed report on the Vulnerability, and assignment of a 90-day deadline for remediation. Sworn testimony by

Respondent's employees responsible for data security revealed internal confusion and an alarming lack of accountability regarding responsibility for remediation of vulnerabilities.

g. Remediation was ineffectively assigned to an untrained employee. Shortly after the EaglePro penetration test report was circulated on January 11, 2019, responsibility for remediating the Vulnerability was assigned to a new employee (the "Accountable Remediation Owner"). The newly assigned Accountable Remediation Owner was never given a copy of the EaglePro penetration test detailing the Vulnerability. Moreover, the gravity of the Vulnerability was not highlighted to the employee, who was merely provided with a laundry list of EaglePro application vulnerabilities, mostly minor in nature. In addition, the new Accountable Remediation Owner was not provided with the applicable policies and standards for Respondent's data security and remediation, and was offered little support in performing these new responsibilities.

26. In addition to the failure to promptly detect and then remediate the Vulnerability, EaglePro and FAST generally lacked adequate controls to protect NPI.

27. Respondent knew that its procedure to identify and classify sensitive documents in FAST was significantly flawed. To identify and classify sensitive documents containing NPI, Respondent relied solely on a process in which title agents, in the course of uploading documents, manually added the prefix "SEC" to the name for each file containing NPI. EaglePro users were then instructed not to distribute any documents containing NPI. Moreover, Respondent was fully aware that this methodology — by a wide margin — failed to identify and protect documents containing NPI. For instance:

i. In April 2018, a presentation by senior members of Respondent's IT and information security management teams to the Board of Directors demonstrated that within a

random sample of 1,000 documents stored in FAST, 30% of those documents contained NPI but were not tagged as such. At this error rate, potentially hundreds of millions of documents containing NPI were not designated properly.

ii. A June 1, 2019 email from Respondent's Vice President of Information Security discussing problems with the NPI controls in EaglePro likewise acknowledged that the manual process for designated NPI was "highly prone to error."

28. Despite these widely acknowledged control deficiencies, Respondent's staff responsible for EaglePro's application security — the Senior Director of Information Security, the IT Application Manager, and the EaglePro Accountable Remediation Owner — testified that they were not aware that NPI was transmitted using EaglePro or that a 2018 sample of documents in FAST had revealed a significant error rate in the tagging of documents with NPI.

29. In June 2019, after a journalist publicized Respondent's data security vulnerabilities, Respondent's information security personnel recommended modifying EaglePro, limiting access to authenticated users. Senior management rejected that recommendation. Respondent's information security personnel then recommended adding two technical controls to protect NPI. First, they recommended disallowing transmission of tagged NPI documents in EaglePro via unsecured links. Second, in recognition of the faulty nature of manually tagging documents, they recommended a scan of FAST for documents containing NPI but not tagged as sensitive. Neither recommendation was implemented.

30. To this day, the sole control preventing EaglePro from being used to transmit NPI is merely an instruction to users not to send NPI. Respondent relies on training to ensure employees follow procedures, delegating responsibility for such training to individual business units. At the same time, individual business units are left at their own discretion to design and

conduct the training. This lack of centralized and coordinated training exists despite Respondent's professed awareness of inadequate controls.

31. When the Department asked Respondent's CISO why additional controls were not adopted to protect NPI, Respondent's CISO disavowed ownership of the issue, stating, among other reasons, that such controls were not the responsibility of Respondent's information security department.

32. Respondent also failed to timely encrypt documents containing NPI as required by the Department's Cybersecurity Regulation. 23 NYCRR § 500.15 requires, among other things, documents containing NPI be encrypted. While encryption would not have prevented the data exposure of NPI due to the Vulnerability, the encryption requirement of 23 NYCRR § 500.15 went into effect on September 1, 2018 – 18 months after the Part 500 regulation went into effect. Nonetheless, Respondent did not encrypt the tens of millions of documents tagged as containing NPI until approximately December 2018, months after the relevant provisions of the Cybersecurity Regulation went into effect. Moreover, the remainder of the documents in FAST — which Respondent knew included many documents containing NPI — were not fully encrypted until mid-2019.

#### Respondent's Data Exposure is Revealed

33. On May 24, 2019, Brian Krebs, a journalist who reports on cybersecurity issues, published an article revealing that Respondent had exposed 885 million documents — dating as far back as 2003 and many containing NPI — by rendering the documents openly accessible to the public. Mr. Krebs himself was easily able to view highly sensitive consumer data, including documents that contained NPI such as social security numbers, drivers' licenses, and tax and banking information.

34. In the days leading up to publication of his findings, Mr. Krebs and another individual who had stumbled upon the Vulnerability repeatedly reached out to First American to alert the firm of the Vulnerability.

35. After publication of Mr. Krebs's findings, Respondent reported the incident to the Department, as required under 23 NYCRR § 500.17. Respondent also publicly disclosed that it "shut down external access to a production environment with a reported design defect that created the potential for unauthorized access to customer data." In an Incident Update addressed to Respondent's customers on May 31, 2019, Respondent conceded that documents containing NPI were potentially exposed.

36. After the disclosure by Mr. Krebs, Respondent conducted a forensic investigation into data exposure attributable to the Vulnerability but was unable to determine whether records were accessed prior to June 2018. Respondent's forensic investigation relied on a review of web logs retained from June 2018 onward. Respondent's own analysis demonstrated that during this 11-month period, more than 350,000 documents were accessed without authorization by automated "bots" or "scraper" programs designed to collect information on the Internet.

#### Respondent's Vulnerability Management Program

37. Vulnerability management is an essential component of cybersecurity. Every organization will regularly discover vulnerabilities on its information systems - such as in its network, on devices such as laptops and servers, and in its software and applications. Vulnerabilities can have many sources – for instance, they can be introduced by an organization's employees, or they can be introduced by a vendor that creates and updates tools and software employed by the organization. Whatever the source, attackers can exploit vulnerabilities to gain

unauthorized access to an organization's information systems, potentially resulting in the theft of sensitive data and ransomware attacks.

38. Unremediated vulnerabilities are one of the leading causes of cyber incidents. A program to identify, track, and remediate vulnerabilities is therefore an essential component of cybersecurity. Timely remediation of vulnerabilities requires strong governance, including assignment and tracking of responsibilities. Respondent understood the dangers posed by poor vulnerability management: since at least 2017, Respondent repeatedly identified vulnerabilities and vulnerability management as among Respondent's top risks.

39. There were longstanding, systemic problems with Respondent's vulnerability management. These problems included poor governance, such as a lack of effective oversight by senior management and Respondent's Board. These problems grew over time and contributed to Respondent's failure to remediate the Vulnerability after its discovery in December 2018.

40. On paper, Respondent's governance framework required timely remediation and careful documentation of vulnerabilities. Although Respondent formalized a detailed policy and standard governing vulnerability management, Respondent failed to adhere to this policy. Timelines and approval requirements were ignored as the backlog of unremediated vulnerabilities grew over the years. Among the requirements of Respondent's vulnerability management policy and standard are the following:

- a. Critical/High risk vulnerabilities must be remediated in 15 days; medium risk vulnerabilities in 45 days, and low risk vulnerabilities must be remediated in 90 days.
- b. All information assets must be scanned for vulnerabilities.
- c. An Accountable Remediation Owner ("ARO") tasked with ensuring timely remediation must be assigned to each vulnerability; and

d. If a vulnerability cannot be remediated timely, the ARO must provide a remediation plan and time estimate for remediation, as well as obtain a waiver or risk acceptance from the CISO.

41. Respondent failed to implement these policies. These failures compounded over time.

a. On October 3, 2018, there were 26,873 unresolved critical/high vulnerabilities for more than 90 days, including a staggering 11,000 critical and high-risk vulnerabilities that Respondent had failed to remediate for more than 3 years. There were an additional 8,782 critical/high vulnerabilities that were left unremediated for 2 to 3 years. Again, these were vulnerabilities for which Respondent's policies required remediation with *15 days*.

b. On March 6, 2019, Respondent's CISO reported that the company had over 100,000 unremediated critical/high vulnerabilities.

c. On November 11, 2019, Respondent had over 320,000 high or critical unremediated vulnerabilities. By December 2, 2019, Respondent had identified an additional 131,000 high or critical vulnerabilities requiring remediation.

42. Respondent's CISO and senior personnel were fully aware of the disastrous state of Respondent's vulnerability management. The CISO and senior personnel consistently identified vulnerability management as one of Respondent's top two or three cyber risks from 2017 through 2019. Audit reports reflected the many deficiencies in Respondent's vulnerability management:

a. A 2017 information security audit identified significant vulnerability management problems. The audit found a failure to assign responsibility for the detailed

tracking and performance of vulnerability remediation, and inadequate system for tracking vulnerabilities.

b. A 2018 internal audit of Respondent's Vulnerability Management Program ("2018 Audit Report") prepared for Respondent's management and Board found serious deficiencies and rated the program as "Major Improvement Needed," meaning that the program is "unlikely to provide reasonable assurance that risks are being managed and objectives are being met." The audit found that "remediation of known vulnerabilities is not completed timely," AROs were not remediating vulnerabilities in a timely manner, and there was no mechanism to ensure timely remediation.

c. The 2018 audit report also found serious problems throughout Respondent's remediation management governance, such as a failure to document waivers when vulnerabilities were not remediated according to policy, incomplete scanning for vulnerabilities, lack of effective reporting to senior management and the board, a lack of analysis of vulnerabilities, and a lack of prioritization of vulnerability remediation.

43. From 2016 through 2019, the CISO's reports to the Board presented plans and timelines for addressing the vulnerability management problems that repeatedly recycle claims about programmatic improvements with ever-extended timelines for implementation. Despite these ever-shifting deadlines, there is no indication that the CISO ever fully explained the extent of the problem to the Board, why previous deadlines were missed, or why the previous improvements failed to address the problem. From 2016 through 2019, the minutes for the Board and Audit Committee meetings do not reflect any discussion of the serious and persistent failures permeating Respondent's vulnerability management program.

a. In a December 2016 report to the Board Audit Committee, Respondent's management reported that they conducted a self-assessment of their vulnerability and patching program in Q2 2016, and that they planned to re-engineer the process of vulnerability scanning and patching.

b. In November 2017, a presentation to the Audit Committee included a timeline showing that the project to "Improve Vulnerability Management" would be completed in 2018, at which point Respondent would "Scan & Remediate Vulnerabilities in all enterprise infrastructure."

c. In December 2017, a report to the Board Audit Committee identified "failure to patch systems" as a top risk and claimed that this would be addressed by the new vulnerability management program be completed in Q4 2017 and a new patching process that will be completed in Q2 2018.

d. In December 2018, a timeline presented to the Audit committee showed that the VRM Program Maturation would reach "V2.0" in Q1 2019, that additional scans would be implemented in Q3 2019, and that the last aspects of the program – "Operational support" – would be completed in Q3 and Q4 2019.

e. In response to the 2018 Audit Report's negative findings on vulnerability management, Respondent's information security management stated that the VRM program established in 2017 would be fully implemented by December 31, 2019 and that this would "close the bulk of the open vulnerabilities."

f. In a March 6, 2019 presentation to the Board, the CISO noted that vulnerabilities were ranked as Respondent's second-highest cybersecurity risk and that the Information Security Department was (yet again) "[s]tepping up pace of vulnerability

remediation.” The CISO claimed that this risk was being addressed by a “full program” and an “enhanced patch management strategy.” A timeline in the presentation showed that vulnerability remediation management would be fully mature by the end of 2019. Despite these promises, the number of unremediated vulnerabilities continued to grow rapidly through December 2019.

44. When the CISO did provide the Board with details about vulnerability management, they were buried among a myriad of less important metrics. For example, the December 2018 Audit Committee Presentation failed to include any metrics on the worsening vulnerability management problem, but does include a chart that purports to show “Average Vulnerabilities per Megabyte of Code (MB) by Week” – an uninformative metric that is not widely used in industry, and did not appear in any Board presentations before or afterward.

45. As is clear from the reporting to the Board, or lack thereof, the problems with Respondent’s vulnerability management included gross deficiencies in governance. Respondent’s cybersecurity and information security personnel simply failed to follow their own cybersecurity policies and standards, which lacked an appropriately rigorous method for classifying vulnerabilities.

46. For instance, Respondent’s information security team used many different scales for measuring the severity of vulnerabilities and had no formal system for reconciling these differences. The vulnerability management standard divided vulnerabilities into four risk levels – critical/high/medium/low – but did not define these categories. At the same time, the Cyber Defense Team used a system of five “Vulnerability Levels” in the EaglePro penetration test report – Urgent/Critical/Serious/Medium/Minimal. In addition, the Vulnerability Remediation Management (“VRM”) team used a different 5-level system for categorizing vulnerabilities –

Critical/high/medium/low/informational and did not maintain any definitions for those vulnerability categories.

47. Despite the confusion caused by the use of many different vulnerability measurement systems, Respondent made no effort to harmonize or document the translation of vulnerability categories from one system to another, even though it contributed to the lack of consistent identification, mitigation, and reporting.

48. Respondent’s process for reconciling these vulnerability scales was done in an *ad hoc* manner, and was undocumented. This lack of governance led to the confusion about the categorization of the Vulnerability that led to it being mischaracterized as a “low severity” vulnerability, as described above in paragraph 25(e).

49. In November 2019, a review found [REDACTED]  
[REDACTED] In a written response to those findings dated December 18, 2019, Respondent’s Executive Vice President [REDACTED]. [REDACTED]  
[REDACTED]:

a. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

b. [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Notably, this same issue

contributed substantially to Respondent’s failure to fix the Vulnerability for months after it was discovered.

50. In response [REDACTED], in late 2019 Respondent created an *ad-hoc* committee of its Board of Directors to oversee the implementation of improvements in the company’s cybersecurity program and to remediate outstanding vulnerabilities – the “Risk Oversight, Accountability and Review Committee.” Respondent also created an Information Security Oversight Committee, chaired by the Executive Vice President, to drive accountability in the IT and information security teams and direct the implementation of the vulnerability management program.

Lack of Appropriate Qualifications

51. Respondent had key information security personnel managers who were not qualified to oversee important cybersecurity functions. This included Individual-1, who served as the Senior Director, Information Security, and managed Respondent’s Vulnerability Management program.

a. In sworn statements to the Department, Individual-1 admitted that he lacked technical expertise, characterizing the Vulnerability Remediation Management Team as “the data entry team,” with no expertise and whose sole job was simply to enter dates and vulnerability levels. Individual-1 further admitted that he lacked any ability or expertise to categorize vulnerabilities. He stated that he did not know whether categorizing the Vulnerability as a “low severity” was correct or not.

b. In approximately February 2020 – one month after he testified that he managed a data entry team and had no technical skills relating to cybersecurity – Individual-1 was promoted to Vice President, with greatly expanded his responsibilities encompassing Vulnerability Management, Application Security, Security Operations. These are all key cybersecurity functions that require skills beyond managing data entry.

52. Respondent’s CISO also lacks the necessary qualifications. Moreover, as discussed in paragraph 43 above, her reporting to the Board was deficient.

## SPECIFICATIONS OF CHARGES

### CHARGE I

#### RESPONDENT VIOLATED 23 NYCRR § 500.02(b)(1)

53. The allegations set forth in paragraphs 1 to 52 above are repeated and realleged as if fully set forth herein.

54. Section 500.02 of the Cybersecurity Regulation, 23 NYCRR § 500.02, requires that each Covered Entity maintain a cybersecurity program designed to protect the confidentiality, integrity, and availability of the Covered Entity’s Information Systems. More specifically, the cybersecurity program must be based on the Covered Entity’s Risk Assessment and designed to perform core cybersecurity functions, including identifying and assessing

internal and external cybersecurity risks that may threaten the security or integrity of NPI stored on the Covered Entity's Information Systems.

55. Respondent failed to perform risk assessments for data stored or transmitted within its Information Systems, specifically the FAST and EaglePro applications, despite those applications' transmission and storage of NPI. Respondent's acts or practices, for the period beginning on the effective date of this Section, August 28, 2017, through May 24, 2019, constitute violations of 23 NYCRR § 500.02(b)(1).

CHARGE II  
RESPONDENT VIOLATED 23 NYCRR §§ 500.03(b), (d), & (m)

56. The allegations set forth in paragraphs 1 to 55 above are repeated and realleged as if fully set forth herein.

57. Section 500.03 of the Cybersecurity Regulation, 23 NYCRR § 500.03, requires that a Covered Entity implement and maintain a written policy or policies, approved by a Senior Officer or the board of directors (or an appropriate committee thereof) or equivalent governing body, setting forth the Covered Entity's policies and procedures for the protection of its Information Systems and the NPI stored on those Information Systems. Section 500.03 further requires that the cybersecurity policy shall be based on the Covered Entity's Risk Assessment and address the following areas, among others: data governance and classification, access controls and identity management, and risk assessment. 23 NYCRR §§ 500.03(b), (d), and (m).

58. Respondent failed to maintain and implement data governance and classification policies for NPI suitable to its business model and associated risks. Respondent's classification of EaglePro as an application that did not contain or transmit NPI was incorrect given that EaglePro could and did allow access to documents containing NPI.

59. Respondent did not maintain an appropriate, risk-based policy governing access controls for EaglePro. These inadequate access controls failed to prevent the exposure of NPI in millions of documents. Respondent's acts or practices for the period beginning on the effective date of the Section, August 28, 2017, through May 24, 2019, constitute violations of 23 NYCRR §§ 500.03 (b), (d), and (m).

CHARGE III  
RESPONDENT VIOLATED 23 NYCRR § 500.07

60. The allegations set forth in paragraphs 1 to 59 above are repeated and realleged as if fully set forth herein.

61. Section 500.07 of the Cybersecurity Regulation, 23 NYCRR § 500.07, requires that a Covered Entity shall limit user access privileges to Information Systems that provide access to NPI and shall periodically review such access privileges.

62. The Vulnerability allowed unauthorized remote users to gain access to NPI in Respondent's FAST system. The Vulnerability existed due to a lack of reasonable access controls. Any person could access sensitive documents stored in FAST simply by altering an EaglePro URL. Respondent's acts or practices, for the period beginning on the effective date of the Section, August 28, 2017, through May 24, 2019, constitute violations of 23 NYCRR § 500.07.

CHARGE IV  
RESPONDENT VIOLATED 23 NYCRR § 500.09

63. The allegations set forth in paragraphs 1 to 62 above are repeated and realleged as if fully set forth herein.

64. Section 500.09(a) of the Cybersecurity Regulation, 23 NYCRR § 500.09(a), requires each Covered Entity to conduct a periodic Risk Assessment of the Covered Entity's

Information Systems to inform the design of the cybersecurity program as required by 23 NYCRR Part 500. Such Risk Assessment shall be updated as reasonably necessary to address changes to the Covered Entity's Information Systems, NPI, or business operations. The Covered Entity's Risk Assessment shall allow for revision of controls to respond to technological developments and evolving threats and shall consider the particular risks of the Covered Entity's business operations related to cybersecurity, NPI collected or stored, Information Systems utilized and the availability and effectiveness of controls to protect NPI and Information Systems.

65. Section 500.09(b) requires that the Risk Assessment be carried out in accordance with written policies and procedures and shall be documented. Among other things, such policies and procedures shall include: criteria for the assessment of the confidentiality, integrity, security, and availability of the Covered Entity's Information Systems and Nonpublic Information, including the adequacy of existing controls in the context of identified risks; and requirements describing how identified risks will be mitigated or accepted based on the Risk Assessment and how the cybersecurity program will address the risks.

66. The Risk Assessment was not sufficient to inform the design of the cybersecurity program as required by 23 NYCRR Part 500, as indicated not only by Respondent's failure to identify where NPI was stored and transmitted through its Information Systems, but also its failure to identify the availability and effectiveness of controls to protect NPI and Information Systems. Respondent's acts or practices, for the period beginning on the effective date of this Section, March 1, 2018, through May 24, 2019, constitute violations of 23 NYCRR § 500.09.

CHARGE V  
RESPONDENT VIOLATED 23 NYCRR § 500.14(b)

67. The allegations set forth in paragraphs 1 to 66 above are repeated and realleged as

if fully set forth herein.

68. Section 500.14(b) of the Cybersecurity Regulation, 23 NYCRR § 500.14(b), requires that as part of its cybersecurity program, each Covered Entity is required to provide regular cybersecurity awareness training for all personnel, and such training must be updated to reflect risks identified by the Covered Entity in its Risk Assessment.

69. Respondent did not provide adequate data security training for Respondent's employees and affiliated title agents responsible for identifying and uploading sensitive documents into the FAST system and in using the EaglePro system. This failure was especially significant since both the process of identifying sensitive documents and the only control preventing NPI from being distributed through EaglePro depended solely on employees and users correctly identifying sensitive documents and treating them appropriately. As a result, Respondent did not adopt cybersecurity awareness training that reflected the risks inherent in its operations and led to the Vulnerability reported on May 24, 2019. Respondent's acts or practices, for the period beginning on the effective date of the Section, March 1, 2018, through May 24, 2019, constitute violations of 23 NYCRR § 500.14.

CHARGE VI  
RESPONDENT VIOLATED 23 NYCRR § 500.15

70. The allegations set forth in paragraphs 1 to 69 above are repeated and realleged as if fully set forth herein.

71. Section 500.15 of the Cybersecurity Regulation, 23 NYCRR § 500.15 requires that Covered Entities implement controls, including encryption, to protect NPI held or transmitted by the Covered Entity both in transit over external networks and at rest. This section allows for the use of effective alternative compensating controls to secure NPI in transit over external networks and at rest if encryption of such is infeasible. Such compensating controls

must be reviewed and approved by the Covered Entity's CISO. To the extent that a Covered Entity is utilizing compensating controls, the feasibility of encryption and effectiveness of the compensating controls shall be reviewed by the CISO at least annually.

72. Until the end of 2018, Respondent failed to encrypt documents marked as sensitive within the FAST repository. Other documents that contained sensitive data but were erroneously not marked as sensitive— were not encrypted until mid-2019. Respondent did not implement controls suitable to protect the NPI stored or transmitted by it, both in transit over external networks and at rest, nor did Respondent implement suitable compensating controls approved by the CISO. Respondent's acts or practices, for the period beginning on the effective date of the Section, September 3, 2018, through May 24, 2019, constitute violations of 23 NYCRR § 500.15.

CHARGE VII  
RESPONDENT VIOLATED 23 NYCRR § 500.02(b)(2)

73. The allegations set forth in paragraphs 1 to 72 above are repeated and realleged as if fully set forth herein.

74. Section 500.02 of the Cybersecurity Regulation, 23 NYCRR § 500.02, requires that each Covered Entity maintain a cybersecurity program designed to protect the confidentiality, integrity, and availability of the Covered Entity's Information Systems. The cybersecurity program must be designed to perform certain "core cybersecurity functions," including but not limited to "(2) use defensive infrastructure and the implementation of policies and procedures to protect the Covered Entity's Information Systems, and the Nonpublic Information stored on those Information Systems, from unauthorized access, use or other malicious acts."

75. The glaring deficiencies in Respondent's vulnerability management program detailed above demonstrate Respondent's failure to implement effective policies and procedures which would protect Respondent's Information Systems from unauthorized access, use or other malicious acts. Respondent's failure to implement a fully functional vulnerability management program contributed to the length of time the Vulnerability existed, thereby exposing millions of documents containing NPI to potential malicious actors. Respondent's acts or practices, for the period beginning on the effective date of the Section, August 27, 2018, through the present, constitute violations of 23 NYCRR § 500.02(b)(2).

CHARGE VIII  
RESPONDENT VIOLATED 23 NYCRR § 500.03(g)

76. The allegations set forth in paragraphs 1 to 75 above are repeated and realleged as if fully set forth herein.

77. Section 500.03 of the Cybersecurity Regulation, 23 NYCRR § 500.03, requires that a Covered Entity implement and maintain a written policy or policies, approved by a Senior Officer or the board of directors (or an appropriate committee thereof) or equivalent governing body, setting forth the Covered Entity's policies and procedures for the protection of its Information Systems and the NPI stored on those Information Systems. Section 500.03 further requires that the cybersecurity policy shall address, *inter alia*, the Covered Entity's "(g) systems and network security." 23 NYCRR § 500.03(g).

78. Respondent failed to maintain and implement effective systems and network security controls to adequately protect its Information Systems and the NPI stored therein. These failures were apparent from the voluminous amount of vulnerabilities present in Respondent's Information Systems which went unremediated well past the deadlines contained in the policies allegedly used by Respondents. Respondent's acts or practices, for the period beginning on the

effective date of the Section, August 27, 2018, through the present, constitute violations of 23 NYCRR § 500.03(g).

CHARGE IX  
RESPONDENT VIOLATED 23 NYCRR § 500.04(b)

79. The allegations set forth in paragraph 1 to 78 above are repeated and realleged as if fully set forth herein.

80. Section 500.04(b) of the Cybersecurity Regulation, 23 NYCRR § 500.04(b), requires that each Covered Entity’s CISO report to the Covered Entity’s Board of Directors, on an annual basis, “on the Covered Entity’s cybersecurity program and material cybersecurity risks.” 23 NYCRR § 500.04(b). In doing so, the CISO must consider, *inter alia*, the “material cybersecurity risks of the Covered Entity” and the “overall effectiveness of the Covered Entity’s cybersecurity program.” 23 NYCRR § 500.04(b)(3) & (4).

81. Respondent’s CISO failed to apprise the Board of the deeply flawed state of Respondent’s vulnerability management. While vulnerability management was repeatedly identified as a serious risk, the CISO’s reports to the Board did not include the scope and the worsening nature of the deficiencies. Respondent’s acts and practices, or lack thereof, for the period beginning on the effective date of the Section, March 1, 2018, through at least December 2019, constitute violations of 23 NYCRR § 500.04(b).

CHARGE X  
RESPONDENT VIOLATED 23 NYCRR § 500.10(a)(1) & (2)

82. The allegations set forth in paragraph 1 to 81 above are repeated and realleged as if fully set forth herein.

83. Section 500.10(a)(1) of the Cybersecurity Regulation, 23 NYCRR § 500.10(a)(1), requires that each Covered Entity “utilize qualified cybersecurity personnel of the Covered

Entity . . . sufficient to manage the Covered Entity’s cybersecurity risks and to perform or oversee the performance of core cybersecurity function specified in section 500.02(b)(1)-(6) of this Part.” 23 NYCRR § 500.10(a)(1).

84. Section 500.10(a)(2) of the Cybersecurity Regulation, 23 NYCRR § 500.10(a)(2), further requires that each Covered Entity “provide cybersecurity personnel with cybersecurity updates and training sufficient to address relevant cybersecurity risks.” 23 NYCRR § 500.10(a)(2).

85. The senior personnel, including Individual-1 and the CISO, in charge of managing key aspects of Respondent’s cybersecurity program lack the requisite qualifications to hold their positions. The training offered to the senior personnel, including Individual-1, the CISO, and the other cybersecurity personnel employed by Respondent, was insufficiently tailored to address nuanced cybersecurity issues likely to arise in the context of Respondent’s business model.

86. Respondent’s acts and practices, or lack thereof, for the period beginning on the effective date of the Section, August 28, 2017, through the present, constitute violations of 23 NYCRR § 500.10(a)(1) & (b).

CHARGE XI  
RESPONDENT VIOLATED 23 NYCRR § 500.17(b)

87. The allegations set forth in paragraph 1 to 86 above are repeated and realleged as if fully set forth herein.

88. Section 500.17(b) of the Cybersecurity Regulation, 23 NYCRR § 500.17(b), requires that each Covered Entity submit an annual statement to the Department “certifying that the Covered Entity is in compliance with the requirements [of the Cybersecurity Regulation.]”

Such certification should be based on “records, schedules and data” maintained by the Covered Entity. 23 NYCRR § 500.17(b).

89. Respondent’s CISO certified compliance with the Cybersecurity Regulation on January 29, 2018 for the year 2017.

90. Respondent was aware that there were material deficiencies in its cybersecurity program at the time it certified. As a result, the certification filed by Respondent for 2017 was false and constitutes a violation of 23 NYCRR § 500.17(b).

CHARGE XII  
RESPONDENT VIOLATED 23 NYCRR § 500.17(b)

91. The allegations set forth in paragraph 1 to 90 above are repeated and realleged as if fully set forth herein.

92. Section 500.17(b) of the Cybersecurity Regulation, 23 NYCRR § 500.17(b), requires that each Covered Entity submit an annual statement to the Department “certifying that the Covered Entity is in compliance with the requirements [of the Cybersecurity Regulation.” Such certification should be based on “records, schedules and data” maintained by the Covered Entity. 23 NYCRR § 500.17(b).

93. Respondent’s CISO certified compliance with the Cybersecurity Regulation on January 3, 2019 for the year 2018.

94. Respondent was aware that there were material deficiencies in its cybersecurity program at the time it certified. As a result, the certification filed by Respondent for 2018 was false and constitutes a violation of 23 NYCRR § 500.17(b).

CHARGE XIII  
RESPONDENT VIOLATED 23 NYCRR § 500.17(b)

95. The allegations set forth in paragraph 1 to 94 above are repeated and realleged as

if fully set forth herein.

96. Section 500.17(b) of the Cybersecurity Regulation, 23 NYCRR § 500.17(b), requires that each Covered Entity submit an annual statement to the Department “certifying that the Covered Entity is in compliance with the requirements [of the Cybersecurity Regulation.” Such certification should be based on “records, schedules and data” maintained by the Covered Entity. 23 NYCRR § 500.17(b).

97. Respondent’s CISO certified compliance with the Cybersecurity Regulation on May 6, 2020 for the year 2019.

98. Respondent was aware that there were material deficiencies in its cybersecurity program at the time it certified. As a result, the certification filed by Respondent for 2019 was false and constitutes a violation of 23 NYCRR § 500.17(b).

PLEASE TAKE NOTICE THAT, as a result of these charged violations, the Department is seeking the following relief:

- a) The imposition of civil monetary penalties against respondent with respect to those violations in which such penalties are authorized; and
- b) The issuance of an order upon the Respondent requiring it to remedy the defined violations alleged herein; and
- c) Such other relief as is deemed just and appropriate.

PLEASE TAKE FURTHER NOTICE THAT:

(A) Respondent is a person within the meaning of Section 2402 of the Insurance Law, and as such, is within the jurisdiction of the Department for purposes of this hearing, which is brought against the Respondent pursuant to Article 24 of the Insurance Law.

(B) This Notice of Hearing and Statement of Charges is issued to Respondent pursuant to Section 2405 of the Insurance Law and Sections 305 and 306 of the Financial Services Law, and notice of the hearing is given to Respondent in accordance with Section 304 of the Financial Services Law.

(C) Your attention is directed to a statement in plain language, attached hereto as Appendix A, summarizing the provisions of 23 NYCRR Part 2. **This statement contains important information concerning your rights and the Department's hearing procedures and should be read carefully.** A copy of 23 NYCRR Part 2 will be furnished upon request.

(D) Interpreter services shall be made available to deaf persons, at no charge.

(E) Should you fail to appear at the time and place set forth above, or at any subsequent date fixed for the hearing, the hearing will proceed as scheduled and may result in the following:

- i. The issuance of a report by the Superintendent finding defined violations of 23 NYCRR Part 500 and the issuance of an order upon the Respondent requiring it to remedy the defined violations; and
- ii. The assessment of civil monetary fines against the Respondent pursuant to Financial Services Law Section 408.

Dated: New York, New York  
June 17, 2021

NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES

By: /s/ Katherine A. Lemire  
KATHERINE A. LEMIRE  
Executive Deputy Superintendent  
Consumer Protection and Financial Enforcement

By: /s/ Justin S. Herring  
JUSTIN S. HERRING  
Executive Deputy Superintendent  
Cybersecurity Division

ELIZABETH A. FARID  
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## APPENDIX A



NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
ONE STATE STREET  
NEW YORK, NEW YORK 10004

### SUMMARY OF HEARING PROCEDURES

Summary of Hearing Procedures for Adjudicatory Proceedings as Set Forth in 23 NYCRR 2, as Required by section 301.3 of the State Administrative Procedure Act.

1. The Hearing will be conducted and administered in compliance with the State Administrative Procedure Act and the Financial Services Law and regulations promulgated thereunder and will be held before an impartial hearing officer who will make a Report of findings and recommendations to the Superintendent.
2. You must be ready and prepared with your evidence to present your case on the hearing date.
3. You may be represented by an attorney at the hearing. In the event you do not have an attorney, you may appear on your own behalf, a member of the partnership may appear on behalf of the partnership, or an authorized officer of an entity may represent that entity.
4. You may file a written answer to notice of action or proposed action. If you do so, it should be delivered at least two (2) days before the hearing date to the New York State Department of Financial Services ("Department") official who signed the notice of action or proposed action.
5. You may present evidence and have witnesses testify at the hearing. If you believe a witness will not appear voluntarily and you do not have an attorney representing you, you may request the Superintendent, a Deputy Superintendent, the hearing officer assigned to hear the matter, or any employee of the department authorized by the Superintendent to furnish you with a subpoena to compel the witness' attendance. If the subpoena is issued to you, the service of the subpoena upon the witness and payment of all required fees is your responsibility.

6. All parties are entitled to discovery of the evidence intended to be introduced at the hearing.
7. All witness will be sworn or give an affirmation.
8. The rules of evidence are not the same as those in a court of law. Evidentiary and burden of proof issues are governed by Financial Services Law section 305(e) and State Administrative Procedure Act section 306.
9. The burden of proof is substantial evidence.
10. Prior to the commencement, a hearing may be postponed upon your written request if there is a good reason why the hearing should not begin on the scheduled date. To request a postponement you should contact the Department official who signed the notice of action or proposed action.
11. A hearing in progress may be adjourned by the hearing officer at your request if you can give a good reason and support your request with written evidence as the hearing officer deems appropriate.
12. If you do not appear or are not represented at the hearing, the hearing will take place as scheduled and a decision on the charges will be made. The decision may result in the revocation or suspension of your license(s) and the denial of any pending applications, and such other action as may be permitted by law, including the imposition of monetary fines.
13. If you do not appear at a hearing and a decision against you is issued, the hearing may be reopened upon a written application, if you satisfy the hearing officer that there are valid reasons for your failure to appear or your failure to request an adjournment or postponement and you have a meritorious case. If you do appear at the hearing and the decision is made against you, the hearing may be reopened on written request to the hearing officer if you can show newly discovered evidence or a compelling reason for such reopening. The application to reopen must be made within one-hundred and twenty (120) days from the date of the Superintendent's decision.
14. You may request a copy of the hearing officer's report and an opportunity to comment on it in writing before the Superintendent acts on the report. The request must be made to the hearing officer on the record prior to the close of the hearing.
15. Once a decision is made against you, you may, if you wish, take an appeal to the courts. This appeal must be made within one-hundred and twenty (120) from the date the decision was effective. It should be emphasized that your right to take an appeal is not connected in any way with your right to reopen the hearing as described in section 13, and an application to reopen does not extend your time to take an appeal to the courts.