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AUG 18 2005
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
DEPUTY

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CLERK, U.S. DISTRICT COURT
AUG 22 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

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10- UNITED STATES DISTRICT COURT
11- CENTRAL DISTRICT OF CALIFORNIA
12- SOUTHERN DIVISION

ENTERED
CLERK, U.S. DISTRICT COURT
AUG 24 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

14- FEDERAL TRADE COMMISSION,
15- Plaintiff,
16- v.
17- UNIVERSAL PROCESSING, INC.,
18- a California corporation, and REY
19- PASINLI, individually and as an
20- officer or director of Universal
Processing, Inc.,
21- Defendants.

CV05-6054FMC(VBKx)

22- Civil No. ~~SA CV~~
23- STIPULATED PERMANENT
24- INJUNCTION AND FINAL ORDER

25- THIS CONSTITUTES NOTICE OF ENTRY
26- AS REQUIRED BY FRCP, RULE 77(d).

27- Plaintiff, Federal Trade Commission ("Commission" or "FTC"), has filed a
28- Complaint for a permanent injunction and other relief in this matter, pursuant to
Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
§ 53(b), charging that defendants Universal Processing, Inc., and Rey Pasinli
(collectively "defendants") engaged in unfair acts or practices in violation of
Section 5 of the FTC Act, 15 U.S.C. § 45. The Commission and defendants,
having been represented by counsel and acting by and through such counsel, have

1 consented to the entry of this Stipulated Permanent Injunction and Final Order
2 (“Stipulated Order” or “Order”) without a trial or adjudication of any issue of law
3 or fact herein.

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5 FINDINGS

6 1. This is an action by the Commission initiated under Section 13(b) of
7 the FTC Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the
8 authority to seek the relief contained herein.

9 2. This Court has jurisdiction of the subject matter of this case and the
10 parties hereto pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331,
11 1337(a), and 1345.

12 3. Venue in this district is proper pursuant to 15 U.S.C. §53(b) and
13 28 U.S.C. § 1391(b) and (c).

14 4. The activities of defendants are “in or affecting commerce,” as defined
15 in Section 4 of the FTC Act, 15 U.S.C. § 44.

16 5. The Complaint states a claim upon which relief may be granted against
17 defendants under 15 U.S.C. §§ 45(a) and 53(b).

18 6. The parties shall each bear their own costs and attorney’s fees incurred
19 in this action and have waived all claims under the Equal Access to Justice Act, 28
20 U.S.C. § 2412, and all rights to seek judicial review, or otherwise to challenge the
21 validity of this Stipulated Order.

22 7. Entry of this Order is in the public interest.

24 ORDER

25 DEFINITIONS

26 For purposes of this Order, the following definitions shall apply:

27 1. “Automatic Clearing House Network” or “ACH network” shall mean
28 the electronic funds transfer system governed by the NACHA Rules that provides

1 for the interbank clearing of credit and debit entries to accounts at financial
2 institutions.

3 2. "ACH debit" shall mean any completed or attempted debit to a
4 consumer's account at a financial institution that is processed electronically
5 through the ACH network.

6 3. "ACH processing" shall mean the transfer of funds or attempted
7 transfer of funds through the ACH network as either an ACH debit or a credit.

8 4. "NACHA" shall mean the National Automated Clearing House
9 Association.

10 5. "NACHA Rules" shall mean the NACHA Operating Rules, as
11 amended from time to time.

12 6. "Payment processing" shall mean the performance of any function of
13 collecting, charging, or transmitting a consumer's payment for goods or services by
14 debiting or otherwise accessing a consumer's credit card account or bank account,
15 through the use of any payment mechanism, including but not limited to bank
16 checks (demand drafts), credit card transactions, and ACH processing.

17 7. "Client" shall mean any person, corporation, originator or other entity
18 that has retained or contracted with defendants for defendants to provide services
19 as a third-party processor or third-party originator of ACH transactions.

20 8. "Express verifiable authorization" means a) express written
21 authorization by a customer, including the customer's signature and date of
22 authorization; or b) express oral authorization that is audio-recorded and evidences
23 clearly the customer's authorization of payment for the goods or services that are
24 the subject of the transaction; the number of debits, charges, or payments; the date
25 the debits, charges, or payments will be submitted for payment; the amount of the
26 debits, charges, or payments; the customer's name; the customer's billing
27 information, including the account used to collect payment; the telephone number
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1 for customer inquiry that is answered during normal business hours; and the date of
2 the customer's oral authorization.

3 9. "Established business relationship" means a relationship between a
4 seller and a consumer based on (1) the consumer's purchase, rental, or lease of the
5 seller's goods or services or a financial transaction between the consumer and the
6 seller, within the eighteen (18) months immediately preceding the date of a sales
7 offer; or (2) the consumer's inquiry or application regarding a product or service
8 offered by the seller, within the three (3) months immediately preceding the date of
9 a sales offer.

10 10. "Payment processor" means any person providing any payment
11 processing services in connection with the sale or purchase of goods or services,
12 including but not limited to depository financial institutions, third-party processors,
13 data processing service bureaus, and any others who provide services to verify,
14 correct or update account or bank routing data or formats.

15 11. "Person" means any natural person or organization, including but not
16 limited to, any proprietorship, partnership, company, firm, corporation, joint
17 venture, society, association, trust, or government agency or unit and any other
18 group or combination acting as an entity.

19 12. "Telemarketing" means any business activity (whether or not covered
20 by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that involves attempts to
21 induce consumers to purchase any investment, item, good, service, partnership
22 interest, trust interest or other beneficial interest, or to enter a contest for a prize, by
23 means of telephone sales presentations, either exclusively or in conjunction with
24 the use of other forms of marketing.

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1 **I. PROHIBITED PRACTICES**

2 **IT IS THEREFORE ORDERED** that defendants, and each of them, and
3 their successors, assigns, officers, agents, servants, employees, attorneys, joint
4 venturers, and those persons in active concert or participation with them who
5 receive actual notice of this Order by personal service or otherwise, whether acting
6 directly or through any corporation, subsidiary, division, or other device, are
7 hereby restrained and enjoined from:

8 A. Taking any action to process any payment, directly or on behalf of any
9 client, against any consumer's credit card or bank account without having
10 previously undertaken a reasonable investigation to determine that the consumer
11 has provided defendants or the client with express verifiable authorization;

12 B. Making any false representation to any payment processor regarding
13 any consumer's express verifiable authorization to process a payment against his or
14 her credit card or bank account, expressly or by implication, orally or in writing;
15 and

16 C. Processing or taking any action to process any charge or debit against
17 a consumer's credit card or bank account for any client while knowing or
18 consciously avoiding knowing that the client does not have an established business
19 relationship with the consumer.

20
21 **II. REASONABLE INVESTIGATION**

22 **IT IS FURTHER ORDERED** that defendants, and each of them, and their
23 successors, assigns, officers, agents, servants, employees, attorneys, joint venturers,
24 and those persons in active concert or participation with them who receive actual
25 notice of this Order by personal service or otherwise, whether acting directly or
26 through any corporation, subsidiary, division, or other device, are hereby restrained
27 and enjoined from payment processing on behalf of any client without first
28 engaging in a reasonable investigation of the prospective client and the offer for

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1 which the prospective client requests defendants' payment processing services to
2 ensure that the charges to be processed are authorized and that the prospective
3 client is complying with the Telemarketing Sales Rule and the FTC Act. Such
4 reasonable investigation shall include, but not be limited to:

5 A. Obtaining a client's written assurance or documents, including but not
6 limited to the client's policies and procedures, that demonstrate that the client's
7 business practices comply with any applicable NACHA Rules regarding consumer
8 authorization of debits for transactions;

9 B. Identifying a physical business address for the prospective client; and

10 C. Obtaining and reviewing all marketing materials, telemarketing
11 scripts, promotional materials, websites, and other advertising used or intended to
12 be used by the prospective client.

13

14 **III. MONITORING**

15 **IT IS FURTHER ORDERED** that defendants, and each of them, and their
16 successors, assigns, officers, agents, servants, employees, attorneys, joint venturers,
17 and those persons in active concert or participation with them who receive actual
18 notice of this Order by personal service or otherwise, whether acting directly or
19 through any corporation, subsidiary, division, or other device, are hereby restrained
20 and enjoined from:

21 A. Providing payment processing services to any client without
22 monitoring the return rates for that client and any complaints related to the offer for
23 which defendants are providing payment processing services.

24 B. Failing to immediately cease providing payment processing services to
25 any client where defendants, through their reasonable investigation or through any
26 other source, receive information indicating that the client's business practices,
27 related to an offer for which defendants are providing payment processing services,
28 violate the TSR, applicable NACHA Rules, or Section 5(a) of the FTC Act.

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1 Information indicating that business practices violate the TSR, applicable NACHA
2 Rules, or Section 5(a) of the FTC Act includes, but is not limited to: return rates
3 that exceed the threshold set forth for return entry reporting requirements as
4 currently specified in Section 2.11.3 of the NACHA Rules or as the NACHA Rules
5 may hereafter be amended; a significant number of consumer complaints in any
6 given month regarding unauthorized charges; or notice that the business practices
7 violate the TSR, the NACHA Rules, or the FTC Act. Provided, however, that
8 defendants may resume processing for any client if defendants determine, based on
9 clear and convincing evidence, that the client's business practices did not violate,
10 or no longer violate, the TSR, applicable NACHA Rules, or Section 5(a) of the
11 FTC Act.

12 C. Failing to immediately investigate the cause for any return rate that
13 exceeds 2.5%, as well as all consumer complaints, and cease processing for any
14 client engaged in unfair or deceptive acts or practices.

15
16 **IV. CONSUMER REDRESS**

17 **IT IS FURTHER ORDERED** that:

18 A. A judgment for equitable monetary relief in the amount of \$9,476 is
19 hereby entered, jointly and severally, against defendants Universal Processing and
20 Rey Pasinli. Defendants shall satisfy this judgment within ten (10) days of the date
21 of entry of this Order by the Court, by wire transfer of funds in accord with
22 directions provided by the FTC. All funds paid pursuant to this Paragraph shall be
23 deposited into a fund administered by the Commission or its agent to be used for
24 equitable relief, including but not limited to consumer redress and to pay any
25 attendant costs for the administration of any redress fund. If direct redress to
26 consumers is wholly or partially impracticable or funds remain after redress is
27 completed, the Commission may apply any remaining funds for such other
28 equitable relief (including consumer information remedies) as it determines to be

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1 reasonably related to the defendants' practices alleged in the Complaint. Any
2 funds not used for equitable redress shall be deposited to the United States
3 Treasury as disgorgement. Defendants shall have no right to challenge the
4 Commission's choice of remedies under this Paragraph. No portion of the payment
5 pursuant to this Paragraph shall be deemed a payment of any fine, penalty, or
6 punitive assessment.

7 B. In the event of any default in the above payment schedule, which
8 default continues for ten (10) days beyond the due date of payment, the entire
9 unpaid amount together with interest, as computed under 28 U.S.C. § 1961, from
10 the date of default until the date of payment, shall immediately become due and
11 payable.

12 C. Defendants agree that the facts as alleged in the Complaint filed in this
13 action shall be taken as true for the purpose of any non-dischargeability action in a
14 bankruptcy proceeding.

15
16 **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

17 **IT IS FURTHER ORDERED** that defendants must, within five (5)
18 business days after receipt of this Order as entered by the Court, submit to the
19 Commission a truthful sworn statement that acknowledges receipt of this Order.

20
21 **VI. DISTRIBUTION OF ORDER BY DEFENDANTS**

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

25 A. Corporate defendant Universal Processing, Inc., must deliver a copy of
26 this Order to all of its principals, officers, directors, and managers. Corporate
27 defendant Universal Processing, Inc., also must deliver copies of this Order to all
28 of its employees, agents, and representatives who engage in conduct related to the

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1 subject matter of the Order. For current personnel, delivery shall be within five (5)
2 days of service of the Order upon the corporate defendant. For new personnel,
3 delivery shall occur prior to them assuming their responsibilities;

4 B. For any business that individual defendant Rey Pasinli controls,
5 directly or indirectly, or in which he has a majority ownership interest, defendant
6 Pasinli must deliver a copy of this Order to all principals, officers, directors, and
7 managers of that business. Defendant Pasinli must also deliver copies of this Order
8 to all employees, agents, and representatives of that business who engage in
9 conduct related to the subject matter of the Order. For current personnel, delivery
10 shall be within five (5) days of service of the Order upon defendants. For new
11 personnel, delivery shall occur prior to them assuming their responsibilities;

12 C. For any business where defendant Pasinli is not a controlling person
13 but otherwise engages in conduct related to the subject matter of this Order,
14 defendant Pasinli must deliver a copy of this Order to all principals and managers
15 of such business before engaging in such conduct;

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

19
20 **VII. COMPLIANCE REPORTING BY DEFENDANTS**

21 **IT IS FURTHER ORDERED** that, in order that compliance with the
22 provisions of this Order may be monitored:

23 A. Defendant Universal Processing shall, for a period of five (5) years
24 from the date of entry of this Order, notify the Commission of:

25 1. Changes in its principal place of business, mailing addresses,
26 and telephone numbers, within ten (10) days of the date of such change;

27 2. Changes in its name or use of any aliases or fictitious names,
28 within ten (10) days of the date of such change; and

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1 3. Changes in corporate structure that may affect compliance
2 obligations arising under this Order, including but not limited to a dissolution,
3 assignment, sale, merger, or other action that would result in the emergence of a
4 successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate
5 that engages in any acts or practices subject to this Order; the filing of a bankruptcy
6 petition; or a change in the corporate name or address, at least thirty (30) days prior
7 to such change, provided that, with respect to any proposed change in the
8 corporation about which Universal Processing learns less than thirty (30) days prior
9 to the date such action is to take place, Universal Processing shall notify the
10 Commission as soon as is practicable after obtaining such knowledge.

11 B. Defendant Rey Pasinli shall, for a period of five (5) years from the
12 date of entry of this Order, notify the Commission of any changes in his principal
13 place of business, mailing addresses, and telephone numbers, and any changes in
14 his name or use of any aliases or fictitious names, within ten (10) days of the date
15 of such change.

16 C. One hundred eighty (180) days after the date of entry of this Order,
17 and thereafter within ten (10) days of receipt of written notice from a representative
18 of the Commission, defendants shall each submit a written report to the
19 Commission, sworn to under penalty of perjury, setting forth in detail the manner
20 and form in which they have complied and are complying with this Order. This
21 report shall include, but not be limited to, any changes required to be reported
22 pursuant to subparagraphs A and B, above. In addition, the report shall include
23 information concerning defendants' provision of payment processing services to 1)
24 any person where the chargeback or return rate exceeds two and one-half percent
25 and 2) any person or company where one or more of the principals is not a U.S.
26 resident or where consumers' payments are wired or otherwise deposited into
27 accounts outside of the U.S.

28

1 D. For the purposes of this Order, defendants shall, unless otherwise
2 directed by the Commission's authorized representatives, mail all written
3 notifications to the Commission to:

4 Regional Director
5 Federal Trade Commission
6 915 Second Avenue, Suite 2896
7 Seattle, WA 98174

8 **VIII. PLAINTIFF'S AUTHORITY TO MONITOR COMPLIANCE**

9 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor
10 defendants' compliance with this Order by all lawful means including, but not
11 limited to, the following:

12 A. The Commission is authorized, without further leave of Court, to
13 obtain discovery from any person in the manner provided by Chapter V of the
14 Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of
15 compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring
16 and investigating defendants' compliance with any provision of this Order; and

17 B. The Commission is authorized to use representatives posing as
18 consumers and suppliers to defendants, defendants' employees, or any other entity
19 managed or controlled in whole or in part by defendants, without the necessity of
20 identification or prior notice;

21 C. Provided that nothing in this Order shall limit the Commission's
22 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
23 15 U.S.C. §§ 49 and 57b-1, to investigate whether defendants have violated any
24 provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

25 D. Defendants shall permit representatives of the Commission to
26 interview any employer, consultant, independent contractor, representative, agent,
27 or employee who has agreed to such an interview, relating in any way to any
28 conduct subject to this order. The person interviewed may have counsel present.

IX. RECORD KEEPING PROVISIONS

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE

1
2 IT IS FURTHER ORDERED that, for a period of five (5) years from the
3 date of entry of this Order, in connection with payment processing, defendants and
4 their successors and assigns, are hereby restrained and enjoined from failing to
5 create and retain for three (3) years the following records:

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

8 B. Personnel records accurately reflecting: the name, address, and
9 telephone number of each person employed in any capacity by such payment
10 processing business, including as an independent contractor; that person's job title
11 or position; the date upon which the person commenced work; and the date and
12 reason for the person's termination, if applicable;

13 C. Client files containing the names, addresses, telephone numbers, dollar
14 amounts paid, quantity of items or services purchased, and description of items or
15 services purchased, to the extent such information is obtained in the ordinary
16 course of business;

17 D. Complaints and refund requests (whether received directly, indirectly
18 or through any third party) and any responses to those complaints or requests; and

19 E. All records and documents necessary to demonstrate full compliance
20 with each provision of this Order, including but not limited to, copies of documents
21 obtained as part of the requirements of Sections II and III; acknowledgments of
22 receipt of this Order, required by Section V, and all reports submitted to the FTC
23 pursuant to Section VII of this Order;

24 F. Records sufficient to demonstrate that consumers have provided
25 express verifiable authorization for charges or debits against their credit card or
26 bank accounts prior to the time that defendants processed charges or debits or
27 caused to be processed charges or debits against those consumers' credit card or
28 bank accounts; and

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U.S. DISTRICT COURT
SEATTLE, WASHINGTON

1 G. All records relating to defendants' provision of payment processing
2 services to 1) any person where the chargeback or return rate exceeds two and one-
3 half percent and 2) any person or company where one or more of the principals is
4 not a U.S. resident or where consumers' payments are wired or otherwise deposited
5 into accounts outside of the U.S. Such records shall include all application forms
6 and related materials; correspondence transmitted electronically, by facsimile, or
7 otherwise; documents demonstrating the total number and gross dollar amount of
8 transactions processed or serviced by defendants, directly or indirectly through
9 another payment processor; documents demonstrating the total number and gross
10 dollar amount of transactions that were returned; and documents disclosing all
11 processing fees and charges, net funds paid to sellers, reserve funds or other funds
12 withheld from sellers, the financial institution(s) and accounts where the processed
13 funds were deposited, and the financial institutions and account numbers to which
14 any processed funds were transferred.

15
16 **X. RETENTION OF JURISDICTION**

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

19
20 **IT IS SO ORDERED.**

21
22
23 Dated: August 22, 2005


Grace Ann Cooper
United States District Judge

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1 The parties, by their respective counsel, hereby consent to the terms and
2 conditions of the Stipulated Order as set forth above and consent to the entry
3 thereof.

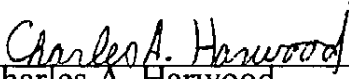
5 **FOR THE PLAINTIFF FEDERAL
6 TRADE COMMISSION**

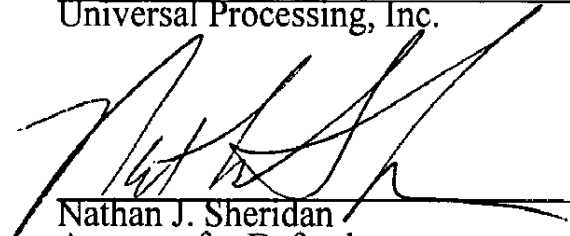
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