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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,
 v.

PROCESS AMERICA, INC., a Nevada
 Corporation;
 CRAIG S. RICKARD, individually and
 as an officer of Defendant Process
 America, Inc.;
 KIM RICKETTS, individually and as an
 officer of Defendant Process America,
 Inc.; and
 KEITH PHILLIPS, individually and as
 an officer of Defendant Process
 America, Inc.

Defendants.

CV14-0386 PSG-VBKx

**COMPLAINT FOR PERMANENT
 INJUNCTION AND OTHER
 EQUITABLE RELIEF**

1 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

2 1. The FTC brings this action under Section 13(b) of the Federal Trade
3 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive
4 relief, rescission or reformation of contracts, restitution, the refund of monies paid,
5 disgorgement of ill-gotten monies, and other equitable relief against Defendants for
6 engaging in unfair acts or practices in connection with Defendants’ processing or
7 arranging for processing of charges to consumers’ credit and debit cards on behalf
8 of Defendants’ merchant clients, in violation of Section 5(a) of the FTC Act, 15
9 U.S.C. § 45(a).

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

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

14 **PLAINTIFF**

15 4. The FTC is an independent agency of the United States Government
16 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
17 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
18 affecting commerce.

19 5. The FTC is authorized to initiate federal district court proceedings, by
20 its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable
21 relief as may be appropriate in each case, including rescission or reformation of
22 contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten
23 monies. 15 U.S.C. §§ 53(b).

24 **DEFENDANTS**

25 6. Process America, Inc. (“Process America”) is a Nevada corporation
26 located at 5940 South Rainbow Blvd., Las Vegas, Nevada 89118, with operations
27 located at 9040 Topanga Canyon Blvd., Canoga Park, California 91304. During
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1 all times material to this Complaint, Process America has been in the business of
2 soliciting and referring merchants who wish to accept credit and debit card
3 payments to credit card payment processors and providing customer service to
4 those merchants. Process America transacts or has transacted business in this
5 District and throughout the United States.

6 7. Defendant Craig S. Rickard (“Rickard”) is one of three principal
7 owners and managers of Process America. At all times material to this Complaint,
8 acting alone or in concert with others, he has formulated, directed, controlled, had
9 the authority to control, or participated in the acts and practices of Process
10 America, including the acts and practices set forth in this Complaint. Defendant
11 Rickard resides in California. In connection with the matters alleged herein,
12 Defendant Rickard has transacted business in this District and throughout the
13 United States.

14 8. Defendant Kim Ricketts (“Ricketts”) is one of the three principal
15 owners and managers of Process America. At all times material to this Complaint,
16 acting alone or in concert with others, he has formulated, directed, controlled, had
17 the authority to control, or participated in the acts and practices of Process
18 America, including the acts and practices set forth in this Complaint. Defendant
19 Ricketts resides in California and, in connection with the matters alleged herein,
20 transacts or has transacted business in this District and throughout the United
21 States.

22 9. Defendant Keith Phillips (“Phillips”) is one of the three principal
23 owners and managers of Process America. At all times material to this Complaint,
24 acting alone or in concert with others, he has formulated, directed, controlled, had
25 the authority to control, or participated in the acts and practices of Process
26 America, including the acts and practices set forth in this Complaint. Defendant
27 Phillips resides in California and, in connection with the matters alleged herein,
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1 transacts or has transacted business in this District and throughout the United
2 States.

3 **COMMERCE**

4 10. At all times material to this Complaint, Defendants Process America,
5 Rickard, Ricketts, and Phillips (collectively, “Defendants”) have maintained a
6 substantial course of trade in or affecting commerce, as “commerce” is defined in
7 Section 4 of the FTC Act, 15 U.S.C. § 44.

8 **SUMMARY OF CASE**

9 11. This is an action by the FTC for injunctive and equitable monetary
10 relief on behalf of consumers against Defendants for their actions in causing more
11 than \$15 million in unauthorized charges to consumers’ credit and debit card
12 accounts. Defendants caused these unauthorized charges by arranging for a group
13 of interrelated merchants engaged in fraud to obtain and maintain merchant
14 accounts that enabled them to process unauthorized credit and debit card payments
15 through the Visa and MasterCard payment networks. Defendants knew or should
16 have known that the merchants were deceptively marketing fraudulent money-
17 making opportunities over the Internet, as evidenced by numerous consumer
18 disputes challenging unauthorized charges; chronically excessive rates of
19 transactions returned by consumers (“chargebacks”); publicly available merchant
20 websites with facially deceptive statements; and notices that several merchant
21 accounts warranted placement in Visa and MasterCard chargeback monitoring and
22 reduction programs.

23 12. Defendants also caused these unauthorized charges to consumers’
24 credit card accounts by actively employing, and advising or enabling the fraudulent
25 merchants to employ, numerous tactics that were designed to evade fraud
26 monitoring programs implemented by Visa and MasterCard. Defendants’ tactics
27 included: (1) opening scores of merchant accounts for processing consumers’
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1 credit and debit card charges for the numerous interrelated corporate entities; (2)
2 submitting merchant applications containing false information about the
3 merchants; and (3) instructing the fraudulent merchants how to manipulate their
4 chargeback ratios and numbers by distributing sales transactions and chargebacks
5 among their numerous merchant accounts (a tactic known as “load balancing”).

6 13. Defendants’ acts and practices enabled the merchants to establish and
7 prolong their deceptive marketing and sales, resulting in millions of dollars in
8 unauthorized charges to consumers’ accounts.

9 **DEFENDANTS’ PAYMENT PROCESSING BUSINESS**

10 14. Defendants are in the business of identifying merchants in need of
11 credit and debit card processing services and helping them to establish merchant
12 accounts with a financial institution (“merchant bank”). Without access to a
13 merchant bank that is a member of the card associations, such as MasterCard or
14 Visa, merchants are not able to accept consumer credit or debit card payments.

15 15. At all times material to this complaint, Defendants worked as an
16 Independent Sales Organization (“ISO”) soliciting merchants (“merchant-clients”)
17 in need of payment processing services and signing them up for merchant accounts
18 through Cynergy Data, Inc. (“Cynergy”). Cynergy is a payment processor that, in
19 turn, established the merchant accounts through its relationships with merchant
20 banks, including Bank of America Merchant Services and BMO Harris Bank N.A.
21 A payment processor is an entity that merchants and merchant banks use to
22 transmit credit and debit card transaction data, and allocate or settle funds between
23 merchants and consumers via merchant accounts. Merchant banks (also referred to
24 as “acquiring banks”) frequently enter into contracts with payment processors that
25 manage the bank’s merchant processing program.

26 16. Defendants and Cynergy essentially acted as intermediaries to link
27 merchant-clients and merchant banks. Typically, ISOs and payment processors
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1 have substantial knowledge about the history and business practices of the
2 merchant-clients they bring to the merchant banks.

3 17. From 2008 to 2009, Defendants serviced merchant accounts for
4 Infusion Media, Inc. and approximately 20 other interrelated Utah- and Nevada-
5 based companies owned and controlled by Jonathan Eborn (“Eborn”) and Michael
6 McClain Miller (“Miller”) that included, among others, Two Part Investments
7 LLC, Two Warnings LLC, Western Networks LLC, Red Vista, LLC, Red Bluff,
8 LLC, and Raven Capital Partners, LLC (collectively, “Infusion Media”).

9 18. Infusion Media operated several related work-at-home scams for
10 approximately one year. The enterprise’s operation involved duping consumers
11 into purchasing bogus business coaching products by misrepresenting an affiliation
12 with Google, Inc. and stating that consumers could make \$100,000 in six months.
13 Infusion Media’s various websites prominently displayed the low cost of the kit
14 (typically \$1.97 or \$3.88), but failed to disclose adequately that purchase of the kit
15 would trigger automatic recurring monthly charges (typically \$72.21) for a website
16 membership or other program that would continue until the consumer took
17 affirmative steps to cancel it.

18 19. Under the direction and control of Eborn and Miller, Infusion Media
19 perpetrated a fraudulent online scheme using product names such as “Google
20 Money Tree,” “Google Pro,” “Google Treasure Chest,” “Internet Initiative,” and
21 “Internet Income Pro.”

22 20. The Infusion Media scheme lasted from at least September 2008 until
23 June 2009, and ceased only after this Court granted the FTC’s request for a
24 temporary restraining order (“TRO”) halting the scheme. See *FTC v. Infusion*
25 *Media, Inc.*, Case No. 2:09-cv-01112-RCJ-LRL (D. Nev., filed June 22, 2009)
26 (TRO entered June 24, 2009; Stipulated Final Judgment and Order for Permanent
27 Injunction entered October 4, 2010).

1 21. The FTC suit charged Eborn, Miller, and other individual defendants,
2 as well as several corporate defendants, including Infusion Media, Inc.; West Coast
3 Internet Media, Inc.; Two Warnings, LLC; and Two Part Investments, LLC, with
4 engaging in widespread deception in violation of Section 5 of the FTC Act, as well
5 as other law violations.

6 22. From July 2008 until June 2009, Defendants opened and managed
7 scores of merchant accounts for the various Infusion Media entities. Opening and
8 managing these merchant accounts enabled Infusion Media to maintain largely
9 unfettered access to the credit card payment system and to use their merchant
10 accounts to initiate millions of dollars in unauthorized charges to consumers' credit
11 and debit card accounts.

12 **UNDERWRITING AND MONITORING MERCHANT ACCOUNTS**

13 23. Merchant banks and payment processors have underwriting criteria
14 that a merchant must meet to obtain a merchant account. These criteria are
15 designed to avoid losses associated with sales transactions that are charged back,
16 especially losses due to transactions induced by fraud or unauthorized transactions.
17 A chargeback occurs when a customer contacts her credit card issuing bank to
18 dispute a charge appearing on her credit card account statement, and the issuing
19 bank charges that amount back to the merchant bank. Each chargeback receives a
20 chargeback reason code that describes the nature of the dispute, such as "no
21 authorization obtained" or "requested/required authorization not obtained and
22 fraudulent transaction."

23 24. The card associations have established compliance monitoring
24 programs that identify (by billing descriptor) those merchants who generate
25 excessive numbers of chargebacks and have high chargeback rates. The card
26 associations calculate a merchant's chargeback rate as a ratio, which represents the
27 number of chargebacks generated by the merchant in a particular month divided by
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1 the number of sales transactions submitted by the merchant in the preceding
2 month.

3 25. When a merchant generates excessive chargebacks and has a high
4 chargeback rate for two consecutive months, Visa and MasterCard place the
5 merchant in compliance monitoring programs designed to detect and correct
6 practices that harm consumers and to protect the integrity of the payment system.

7 26. For example, Visa identifies U.S. merchants for its Merchant
8 Chargeback Monitoring Program (“MCMP”) when the following three conditions
9 arise in the same calendar month: (a) a merchant has at least 100 sales transactions;
10 (b) the merchant has at least 100 chargebacks; and (c) the merchant has a
11 chargeback rate of at least one percent. During 2008 and 2009, MasterCard
12 maintained similar thresholds and triggers for its “Excessive Chargeback
13 Merchant” program (“ECM”).

14 27. Visa’s MCMP tracks merchants by their “DBA Identifiers” (also
15 referred to as the “billing descriptors”), which appear on cardholder statements.
16 Changes to a merchant’s billing descriptor may thwart the effectiveness of Visa’s
17 MCMP monitoring. When a merchant’s billing descriptor is changed, it means
18 that the next time the same merchant has excessive chargebacks, that merchant will
19 be identified in the Visa system as if it is in the initial month of monitoring, thus
20 avoiding the imposition of chargeback fees, reporting requirements, and additional
21 scrutiny that Visa otherwise would have required.

22 28. An ISO Processing Agreement between Defendants and Cynergy
23 provided Defendants the right to make changes to merchant information, including
24 a merchant-client’s DBA Identifier.

25 29. To assist in the underwriting process, card associations have created a
26 program to track merchants and individuals that previously have had merchant
27 accounts terminated by merchant banks for, among other things, excessive
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1 chargebacks. MasterCard, for example, maintains the Member Alert to Control
2 High-risk Merchants (“MATCH”) list. This list includes merchants (along with
3 the principals) whose accounts were terminated by merchant banks for certain
4 reasons. For example, a merchant bank must place a merchant on the MATCH list
5 when the merchant bank terminates the merchant’s processing account for fraud,
6 excessive chargebacks or other violations of card association operating rules.
7 Many acquirers will refuse to establish merchant accounts for merchants or
8 individuals who appear on the MATCH list, given the high risk involved.

9 30. Defendants’ ISO Agreement with Cynergy required Defendants to
10 solicit and sign up merchant-clients that met the parameters of the underwriting
11 policies established by Cynergy and the merchant bank. To that end, Defendants
12 had to conduct a preliminary review of merchant applications, merchant
13 agreements and supporting documentation, and had to perform due diligence on
14 prospective merchant-clients, including site inspections of business premises.

15 31. At all relevant times, Defendant Rickard was directly in charge of
16 sales and business development, which included oversight of the Risk and
17 Underwriting Department responsible for boarding new merchant accounts and
18 monitoring the transaction and chargeback activity of existing merchant accounts.

19 32. To facilitate the opening and monitoring of merchant accounts,
20 Defendants entered each merchant-client’s information into Cynergy’s Virtual
21 Merchant Application System (“VIMAS”) computer database, and then faxed
22 copies of the application, contract, and supporting documents to Cynergy.

23 33. After Defendants established a merchant-client’s account, they
24 maintained access to VIMAS. This access enabled Defendants to view and
25 monitor transaction activity for the merchant-client, including individual
26 transaction details, as well as monthly and year-to-date summaries of overall
27 transaction and chargeback counts and volume for each merchant account.
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1 34. In addition to the chargeback information provided by VIMAS,
2 Defendants received from Cynergy regular emails containing near real-time
3 chargeback activity for Defendants' portfolio of merchants. Using this
4 information, Process America's Risk and Underwriting Department compiled and
5 faxed to individual merchant-clients a list of all daily chargeback activity,
6 including chargeback reason codes.

7 35. In late June and early July 2008, Defendants first solicited and
8 arranged to open six separate merchant accounts in the name of Infusion Media,
9 Inc., each with a monthly processing volume threshold of \$40,000. The monthly
10 processing volume threshold is an average amount of sales that the merchant-client
11 expects to submit through a merchant account each month. Pursuant to merchant
12 agreements, Defendants' merchant-clients are generally prohibited from billing an
13 amount substantially above this threshold. The purpose of the threshold is to
14 determine what underwriting requirements are necessary for a merchant-client.
15 Low-threshold accounts have fewer underwriting requirements.

16 36. By June 2009, Defendants had arranged for Infusion Media to obtain
17 no fewer than 131 separate merchant accounts, using the names of approximately
18 20 interrelated Infusion Media companies that were associated with at least 27
19 different DBA names. The merchant accounts had monthly processing volume
20 thresholds ranging from \$7,000 to \$50,000.

21 37. As explained in greater detail below, over the course of one year,
22 using the chargeback information noted above, Defendants enabled and advised
23 Infusion Media to distribute its volume of new sales transactions among various
24 new merchant accounts, instead of using accounts that had already generated
25 scrutiny by the card associations. Defendants also established numerous merchant
26 accounts for Infusion Media entities by supplying false information to Cynergy and
27 the merchant bank. This conduct allowed Infusion Media uninterrupted access to
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1 the payment networks to process a total of more than \$15.8 million in charges to
2 consumer credit and debit card accounts.

3 **DEFENDANTS' UNFAIR BUSINESS PRACTICES**

4 **A. Defendants Increased The Number Of Merchant Accounts For Infusion**
5 **Media Entities Despite Excessive Chargeback Rates**

6 38. Over the course of managing Infusion Media's numerous merchant
7 accounts, Defendants received information about high chargeback rates that
8 Defendants should have used to investigate and require corrections to Infusion
9 Media's deceptive marketing practices. Instead, Defendants used the information
10 to enable Infusion Media to avoid detection by the card associations or termination
11 by the merchant bank.

12 39. Specifically, despite Defendants' knowledge of Infusion Media's
13 excessive chargebacks and qualification for Visa and MasterCard chargeback
14 monitoring programs, Defendants continued to arrange for new merchant accounts
15 for various Infusion Media entities. By creating these numerous additional low-
16 volume threshold accounts, not only did Defendants enable Infusion Media to
17 continue initiating unauthorized charges to consumer credit cards as older accounts
18 were scrutinized and closed, but Defendants also enabled Infusion Media to evade
19 the stricter underwriting requirements necessary for a single high-volume account.

20 40. Starting in or before October 2008, and continuing through at least
21 mid-February 2009, Defendants regularly reviewed and transmitted by facsimile to
22 Infusion Media numerous chargeback notices they received directly from Cynergy.

23 41. Based on access to VIMAS, as well as regular chargeback notices
24 they reviewed and faxed to Infusion Media, Defendants knew that various Infusion
25 Media merchant accounts were generating high numbers of Visa and MasterCard
26 chargebacks. These chargeback notices included hundreds of disputes listing "No
27 Cardholder Authorization" as the chargeback reason code. Nevertheless,
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1 Defendants added scores of new merchant accounts. Defendants did so even after
2 they received notice that certain accounts had triggered credit card association
3 chargeback monitoring programs and even as the merchant bank closed older
4 merchant accounts as the result of high chargebacks.

5 42. Indeed, on or about March 31, 2009, Harris Bank closed 14 Infusion
6 Media merchant accounts, but not before Defendants signed up a batch of 15 new
7 merchant accounts in the names of eight various Infusion Media entities, using the
8 DBAs “Mony [sic] Tree Systems” (“Mony Tree”) and “Income Initiative Pro”
9 (“Income Initiative”). Defendants obtained and reviewed the merchant
10 applications, contracts, marketing materials, and supporting documentation for
11 each merchant account, which listed Miller and Eborn as the co-owners of each
12 company: Alta Business Solutions, LLC; Basin Marketing Solutions, LLC; Career
13 At Home Network, LLC; Junction Solutions, LLC; Mountain Vista Marketing,
14 LLC; Online Jobs Network, LLC; Ridgebrook, LLC; and Superstar Income
15 System, LLC. Each merchant account had a monthly processing volume threshold
16 ranging from \$20,000 to \$50,000.

17 43. On or about April 30, 2009, Harris Bank closed four more Infusion
18 Media merchant accounts, but not before Defendants signed up a batch of 44
19 additional Mony Tree and Income Initiative merchant accounts in the names of the
20 same eight Infusion Media entities (listed in paragraph 41). Each merchant
21 account had a monthly processing volume threshold ranging from \$20,000 to
22 \$25,000.

23 44. Between May 28, 2009 and June 5, 2009, Defendants signed up 48
24 entirely new Infusion Media merchant accounts in the names of eight new Infusion
25 Media entities, using the DBA “SafeLock ID.” Defendants obtained and reviewed
26 the merchant applications, contracts, marketing materials, and supporting
27 documentation for each account, which listed Amy Russon (Eborn’s administrative
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1 assistant) as the owner of each company: Asset Safety Services, LLC; Azure ID
2 Group, LLC; Hapland ID Group, LLC; ID Protection Program, LLC; Identity
3 Protection Group, LLC; Marlin Identity Safety, LLC; Patriot Identity Protection,
4 LLC; and Theft Protection Systems, LLC. Each account had a monthly processing
5 volume threshold of \$7,500.

6 45. In total, between June 2008 and June 2009, Defendants obtained,
7 reviewed, and submitted merchant applications, contracts, marketing materials, and
8 supporting documentation through which Infusion Media obtained and maintained
9 131 separate merchant accounts. During this time, Defendants exponentially
10 increased Infusion Media's monthly transaction threshold, and enabled Infusion
11 Media to continue its fraudulent operations as Visa and MasterCard flagged older
12 merchant accounts and Infusion Media entities for excessive chargebacks and
13 placed them in chargeback monitoring programs.

14 **B. Defendants Used Deceptive Information On Infusion Media's**
15 **Applications**

16 46. Defendants accepted merchant applications from, and sometimes
17 drafted merchant application forms on behalf of, the Infusion Media enterprise.
18 Defendants knew or should have known that these applications contained
19 deceptive information. These deceptive statements helped to conceal the
20 interrelated nature of the Infusion Media entities, to mask the deceptive features of
21 Infusion Media's marketing materials, and to portray Infusion Media as a lower
22 credit and underwriting risk to the payment networks and banks.

23 47. In November 2008, Defendants responded to a request from Harris
24 Bank for copies of Infusion Media's website marketing materials by providing
25 copies of web pages that Defendants knew or should have known were false.
26 Defendants passed along to the bank and processor copies of web pages that Eborn
27 admitted to doctoring so that the pages "over disclosed" material terms and
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1 conditions of the sales offer – namely a recurring monthly charge of \$72.21 – that
2 were otherwise hidden on the live web pages. Eborn’s admission was made in an
3 email that he forwarded to Process America, in which Eborn instructs Infusion
4 Media employees to create new pages with disclosures not present on the actual
5 web pages, and makes the further admonition: “Don’t change this on the real pages
6” In spite of this evidence, Defendants passed along the phony webpages to
7 Harris Bank.

8 48. Over time, Infusion Media’s merchant applications, contracts, and
9 supporting documentation for each merchant account identified various
10 combinations of individuals as co-owners of each Infusion Media entity.

11 49. Initially, the paperwork to establish a merchant account identified
12 Miller and Eborn as co-owners of each Infusion Media entity. Later, the
13 paperwork identified as co-owners Miller and Stephanie Burnside (“Burnside”),
14 who is Eborn’s spouse. Still later, paperwork listed as co-owner Amy Russon,
15 who was Eborn’s administrative secretary, for several “Safelock ID” entities
16 controlled by Miller and Eborn (see paragraph 43, above). It should have been
17 obvious to Defendants that Infusion Media’s use of these names was a deliberate
18 attempt by Miller and Eborn to evade detection by credit card associations as at-
19 risk merchants.

20 50. Indeed, in December 2008, Defendants accepted and submitted to
21 Cynergy Infusion Media merchant account applications for Google Treasure Chest.
22 At first, the merchant applications, contracts, and supporting documentation listed
23 Miller and Burnside as the company co-owners. Shortly after Defendants
24 submitted these two Google Treasure Chest merchant account applications for
25 approval, Cynergy notified Defendants that Burnside’s name appeared on
26 MasterCard’s MATCH list.

1 51. To avoid deactivation of the Google Treasure Chest merchant
2 accounts as a result of the MATCH hit, on or around January 6, 2009, Defendants
3 removed Burnside's name from the Google Treasure Chest applications and
4 resubmitted them. Defendants did so in direct contravention of their written policy
5 that all owners of a company must sign the merchant application. Thereafter, all of
6 the Google Treasure Chest merchant accounts listed Miller as the sole owner of the
7 company.

8 52. Defendants accepted and submitted scores of merchant applications in
9 which they knew or should have known that Infusion Media misrepresented that
10 100 percent of sales were "MOTO" (i.e., mail order/telephone order), no sales
11 occurred via the Internet, and the company engaged in "no recurring billing." In
12 truth, Defendants knew or should have known these statements were false, as
13 evidenced by the numerous documents Defendants received in which Infusion
14 Media disclosed that it generated a significant percentage of purported sales via the
15 Internet and engaged in recurring billing.

16 53. Defendants also accepted and submitted merchant applications for
17 Google Treasure Chest in which they knew or should have known that Infusion
18 Media misrepresented the type of goods or services sold as "Advertising Services."

19 54. The deceptive and inaccurate information submitted by Defendants
20 affected the underwriting and risk functions of the payment processor and
21 merchant banks.

22 **C. Defendants Advised Infusion Media To Use Load Balancing To Avoid**
23 **Fraud Detection**

24 55. As noted above, Defendants used Cynergy's VIMAS computer
25 database to monitor transaction and chargeback activity. Defendants also received
26 from Cynergy regular emails with near real-time chargeback activity for their
27 portfolio of merchants.
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1 56. With this information, Defendants took steps to circumvent the card
2 associations' ability to track transaction and chargeback counts. Specifically,
3 Defendants advised Infusion Media precisely how to allocate its sales volume
4 across multiple merchant accounts to avoid triggering the thresholds for the
5 chargeback monitoring programs, a practice known as "load balancing."

6 57. In many instances, Defendants engaged in load balancing by directing
7 Infusion Media to funnel sales transactions through specific accounts with lower
8 transaction volume. This practice kept each merchant account under its approved
9 monthly processing threshold (e.g., \$7,000, \$20,000, or \$40,000) and avoided
10 added scrutiny from the processor or the merchant bank.

11 58. In other instances, Defendants engaged in load balancing by directing
12 Infusion Media to cease processing transactions on particular merchant accounts –
13 those that were in danger of triggering the Visa or MasterCard chargeback
14 thresholds – for a period of 30 days. Because the chargeback monitoring programs
15 require at least 100 transactions in a month (in addition to excessive chargeback
16 numbers and ratios), this type of load balancing was designed to keep certain
17 Infusion Media accounts out of Visa's MCMP and MasterCard's ECM.

18 59. Defendants also engaged in load balancing by suggesting to Infusion
19 Media that it needed more merchant accounts in order to spread out the volume of
20 transactions.

21 60. For example, on or about May 27, 2009, Ruth Elasri, an employee of
22 Process America reportedly in charge of merchant compliance, wrote an email to
23 Eborn and Miller directing them on how to avoid the Visa and MasterCard
24 chargeback thresholds. Elasri advised Eborn and Miller to stop processing on a
25 particular account for about 30 days because the account was "going to hit
26 MasterCard report by hitting 50 by month end." She also advised them to process
27 consumer transactions through other accounts in the interim. Elasri added that if
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1 the other accounts posted high chargebacks, Defendants could add more accounts.
2 Further, she advised Infusion Media to balance transactions across all the accounts
3 as evenly as possible.

4 61. In an investigational hearing with the FTC, Elasri testified that the
5 possible reason for load balancing in this context was to avoid hitting the card
6 associations' chargeback monitoring programs.

7 62. In an email exchange in mid-October 2008, Michael Wolpin, Process
8 America's director of Risk and Underwriting, advised Eborn that two Infusion
9 Media merchant accounts had an increasing number of chargebacks that were
10 approaching amounts that would trigger Visa and MasterCard scrutiny. Wolpin
11 wrote: "You are not balanced. . . . If you all balance on your side, next month
12 should be OK." In other words, in response to increasing chargebacks, Defendants
13 advised Infusion Media to distribute the volume of transactions more evenly
14 among other merchant accounts, thereby diminishing the chance that the amount of
15 chargebacks would reach thresholds where credit card associations scrutinize
16 accounts for fraudulent activity or unauthorized charges.

17 63. As Scott Freedman, an employee in Process America's Chargeback
18 Department, has testified, it was a common practice for Process America to
19 compile and provide chargeback information to merchants throughout Infusion
20 Media's operations. Freedman was largely responsible for compiling the necessary
21 data.

22 64. For example, on November 3, 2008, Freedman provided to Defendant
23 Rickard the number of chargebacks and the number of chargebacks coded as
24 "cardholder does not recognize charge" for four merchant accounts. Defendant
25 Rickard forwarded these chargeback totals, which ranged from 54 to 350 per
26 account, to Eborn the following day.

1 65. Additionally, on June 15, 2009, Freedman sent Elasri an email with a
2 spreadsheet detailing transaction data for the first 10 days of June, including
3 chargeback data through June 15, for the 131 accounts opened for Infusion Media.
4 Freedman highlighted the accounts with high chargebacks and the accounts that
5 Infusion Media should use going forward to avoid hitting threshold chargeback
6 numbers that would trigger the chargeback monitoring programs.

7 66. In sum, Defendants used the information at their disposal to instruct
8 Infusion Media precisely how to load balance across the numerous merchant
9 accounts that Defendants had established. These practices enabled Infusion Media
10 to continue charging consumer credit card accounts and to avoid or delay detection
11 by chargeback monitoring programs over the course of nearly one year, and at the
12 cost of millions of consumer dollars.

13 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

14 67. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
15 deceptive acts or practices in or affecting commerce.” Acts or practices are unfair
16 under Section 5 of the FTC Act if (1) they cause substantial injury to consumers;
17 (2) consumers cannot reasonably avoid injury themselves; and (3) the injury is not
18 outweighed by countervailing benefits to consumers or competition. 15 U.S.C. §
19 45(n).

20 **COUNT ONE**

21 68. As described in Paragraphs 37-66 of this Complaint, Defendants:
22 a. Established scores of additional merchant accounts for Infusion
23 Media;
24 b. Provided merchant banks and others with false or misleading
25 information to obtain and maintain Infusion Media’s merchant accounts; and
26 c. Directed Infusion Media to take actions designed to evade chargeback
27 monitoring programs that detect and prevent fraud and unauthorized billing.
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1 A. Award Plaintiff such preliminary injunctive and ancillary relief as
2 may be necessary to avert the likelihood of consumer injury during the pendency
3 of this action and to preserve the possibility of effective final relief;

4 B. Enter a permanent injunction to prevent future violations of the FTC
5 Act by Defendants;

6 C. Award such relief as the Court finds necessary to redress injury to
7 consumers resulting from Defendants' violations of the FTC Act, including but
8 not limited to, rescission or reformation of contracts, restitution, the refund of
9 monies paid, and the disgorgement of ill gotten monies; and

10 D. Award Plaintiff the costs of bringing this action, as well as such other
11 and additional relief as the Court may determine to be just and proper.

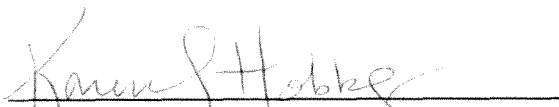
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Dated: January 11, 2014

Respectfully submitted,

JONATHAN E. NEUCHTERLEIN
General Counsel



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310-824-4380 (Fax)
Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Philip S. Gutierrez and the assigned Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

14-CV-00386 PSG-VBKx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

January 16, 2014

Date

By SBOURGEOIS

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Federal Trade Commission	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) Process America, Inc.; Kim Ricketts; Keith Phillips; and Craig Rickard
(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Los Angeles County</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Raymond E. McKowen 10877 Wilshire Blvd., Ste. 700 Los Angeles, CA 90024 (310) 824-4343	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Alyssa B. Klausner, Esq. 6700 Fallbrook Ave Ste 100 West Hills, CA 91307 (818) 721-4873

II. BASIS OF JURISDICTION (Place an X in one box only.) <input checked="" type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border: none;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

1. Original Proceeding
 2. Removed from State Court
 3. Remanded from Appellate Court
 4. Reinstated or Reopened
 5. Transferred from Another District (Specify)
 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Unfair or Deceptive Trade Practices in violation of the FTC Act, 15 U.S.C. 45

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable instrument	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
		<input type="checkbox"/> 448 Education	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

CIVIL COVER SHEET **CV 14-0386**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF?	A DEFENDANT?	
	Then check the box below for the county in which the majority of DEFENDANTS reside.	Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input checked="" type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern	
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies:

2 or more answers in Column C

only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the SOUTHERN DIVISION.
Enter "Southern" in response to Question D, below.

If none applies, answer question C2 to the right. →

C.2. Is either of the following true? If so, check the one that applies:

2 or more answers in Column D

only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the EASTERN DIVISION.
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. ↓

Your case will initially be assigned to the WESTERN DIVISION.
Enter "Western" in response to Question D below.

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	WESTERN

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court** and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed **in this court** that are related to the present case? NO YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): _____

Karen J. Hobbs

DATE: _____

1/16/14

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))