

Michele Arington
marington@ftc.gov
Christine M. Todaro
ctodaro@ftc.gov
Laura Basford
lbasford@ftc.gov
Benjamin R. Davidson
bdavidson@ftc.gov
(Each appearing pursuant to DUCivR 83-1.1(d)(1))
Counsel for Petitioner
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW
CC-8528
Washington, DC 20580
Tel.: 202-326-3157
Fax: 202-326-3395

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Federal Trade Commission,

Petitioner,

vs.

Complete Merchant Solutions, LLC

Respondent.

Case No.:

PETITION TO ENFORCE CIVIL
INVESTIGATIVE DEMAND AND
MEMORANDUM OF LAW IN SUPPORT

Judge

**FEDERAL TRADE COMMISSION’S PETITION TO ENFORCE CIVIL
INVESTIGATIVE DEMAND AND MEMORANDUM OF LAW IN SUPPORT**

Petitioner, the Federal Trade Commission (the “FTC” or “Commission”), petitions this Court under Section 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 57b-1(e), (h), for an order requiring Respondent, Complete Merchant Solutions, LLC (“CMS”), to comply with a civil investigative demand, a form of administrative compulsory process, issued to CMS on November 5, 2019 (“2019 CID”). The Commission issued the 2019 CID in the course of an investigation concerning possible violations by Complete Merchant Solutions, LLC and its current and former officers and managers in their individual capacity, of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310 *et seq.*

Section 5 of the FTC Act prohibits unfair or deceptive acts or practices; the TSR prohibits “abusive” telemarketing, including assisting and facilitating violations of the TSR. The 2019 CID directs CMS to respond to one document request, with subparts, and three interrogatories, with subparts.

CMS has refused to comply with the 2019 CID.¹

The Commission has made no prior application to any court for similar relief and now seeks the aid of this Court through a summary proceeding to enforce the 2019 CID. A summary proceeding is necessary so that FTC staff may thoroughly conduct its investigation. As set forth below, the FTC has met all of the requirements for judicial enforcement of the 2019 CID. Therefore, the FTC respectfully asks this Court to enter an order requiring CMS either to produce the specified information or to appear and show cause why it should not comply with the 2019 CID in its entirety.

The Commission herewith submits the Declaration of Dotan Weinman designated as Petitioner’s Exhibit (Pet. Ex.) 1, to verify the allegations herein. The Commission also submits the following additional exhibits:

- Pet. Ex. 2 Civil Investigative Demand to Complete Merchant Solutions, LLC (Aug. 18, 2017);
- Pet. Ex. 3 August 14, 2019 Letter from Laura Basford to Complete Merchant Solutions, LLC;
- Pet. Ex. 4 October 10, 2019 Letter from Laura Basford to Complete Merchant Solutions, LLC;
- Pet. Ex. 5 October 21, 2019 Letter from Laura Basford to Complete Merchant Solutions, LLC;

¹ To date, CMS has produced no interrogatory responses in response to the 2019 CID. The only documents CMS has produced are documents it previously provided to the FTC in separate FTC investigations. The 2019 CID does not seek responsive documents that were previously provided to the FTC.

- Pet. Ex. 6 October 25, 2019 Letter from Mark Holscher to Laura Basford;
- Pet. Ex. 7 Civil Investigative Demand to Complete Merchant Solutions, LLC (Nov. 5, 2019);
- Pet. Ex. 8 2019 CID Federal Express Delivery Confirmation (Nov. 8, 2019);
- Pet. Ex. 9 November 6, 2019 Letter from Laura Basford to Complete Merchant Solutions, LLC;
- Pet. Ex. 10 November 19, 2019 Letter from Allison Buchner to Laura Basford;
- Pet. Ex. 11 November 22, 2019 Letter from Laura Basford to Complete Merchant Solutions, LLC;
- Pet. Ex. 12 December 4, 2019 Letter from Christine Todaro to Complete Merchant Solutions, LLC;
- Pet. Ex. 13 December 5, 2019 Letter from Allison Buchner to Christine Todaro; and
- Pet. Ex. 14 December 13, 2019 Letter from Allison Buchner to Christine Todaro.

The Parties

1. The Commission is an administrative agency of the United States, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit, *inter alia*, “unfair or deceptive acts or practices in or affecting commerce.” Additionally, the TSR authorizes the Commission to enforce its prohibition on deceptive and abusive telemarketing practices. 16 C.F.R. pt. 310.
2. The Commission has broad statutory authority to address unfair or deceptive acts or practices. For example, Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits, and directs the Commission to combat, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.

3. The FTC Act empowers the agency to investigate potential violations of these laws. Section 3 of the FTC Act, 15 U.S.C. § 43, authorizes the Commission to “prosecute any inquiry necessary to its duties in any part of the United States.” Section 6 of the FTC Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate from time to time, the business and practices of persons, partnerships, or corporations engaged in or whose business affects commerce, with certain exceptions not relevant here. Section 20 of the FTC Act, 15 U.S.C. § 57b-1, empowers the Commission to require by CID the production of documents or other information relating to any Commission law enforcement investigation.
4. The Commission has promulgated three ongoing resolutions pertinent to this case, which authorize its staff to investigate various potential violations of the FTC Act and to use compulsory process to secure information related to these potential violations. The first resolution, File No. 012 3145, authorizes the use of compulsory process to investigate whether telemarketers, sellers or others assisting them have engaged in or are engaging in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and/or deceptive or abusive telemarketing acts or practices in violation of the TSR, 16 C.F.R. pt. 310 (as Amended). Pet. Ex. 1, ¶ 41; Pet. Ex. 7 at 21.
5. The second resolution, File No. 9923259, authorizes the use of compulsory process “[t]o determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services.” Pet. Ex. 1, ¶ 41; Pet. Ex. 7 at 22.

6. The third resolution, File No. 082 3247, authorizes the use of compulsory process “[t]o determine whether unnamed persons, partnerships, corporations, or others have engaged in, or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers’ accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods and services.” Pet. Ex. 1, ¶ 41; Pet. Ex. 7 at 23.
7. Respondent, CMS is a Utah limited liability company who is found, resides, or transacts business in Orem, Utah. Pet. Ex. 1, ¶ 6.²

Jurisdiction and Venue

8. This Court has jurisdiction to enforce the Commission’s duly issued CIDs under Sections 20(e) and (h) of the FTC Act, 15 U.S.C. §§ 57b-1(e), (h). Section 20(e) states as follows:

Whenever any persons fails to comply with any civil investigative demand duly served upon him under this section ...the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Venue is proper in this judicial district under Section 20(e) of the FTC Act, 15 U.S.C. § 57b-1(e), because CMS is found, resides, and transacts business here. Pet. Ex. 1, ¶ 6.

Venue is also proper under 28 U.S.C. § 1391.

² Citations to exhibits are to paragraph numbers where available, or to page numbers that appear in exhibit footers.

The Commission's Investigation

10. CMS provides payment processing services for merchants. These services involve helping merchants obtain and maintain merchant accounts, so that those merchants can accept consumers' payments by credit and debit card. Pet. Ex. 1, ¶ 7.
11. Merchant accounts are available through financial institutions referred to as acquiring banks or "acquirers" that are members of the card networks (e.g., Mastercard and Visa). Without access to a merchant account through an acquirer, merchants cannot accept consumer credit or debit card payments. Pet. Ex. 1, ¶ 8.
12. The FTC started investigating CMS after discovering that CMS provided payment processing services for a significant number of FTC defendants engaged in unfair and deceptive practices, allowing those defendants the ability to accept consumers' credit and debit card payments. Pet. Ex. 1, ¶ 9.
13. The purpose of the investigation is to determine whether CMS, and its current and former officers and managers in their individual capacity, have engaged in deceptive or unfair acts or practices by providing payment processing services to merchants engaged in fraud. If CMS assisted or facilitated these merchants by processing payments from consumers that were either unauthorized or otherwise obtained illegally, this could violate the Telemarketing Sales Rule, 16 C.F.R. Part 310, or Section 5 of the FTC Act, 15 U.S.C. § 45. Pet. Ex. 1, ¶ 2.

The Commission's 2017 CID to CMS

14. The Commission first issued a CID to CMS in August 2017 (“2017 CID”) for documents and information pursuant to the Commission’s Resolution Directing Use of Compulsory Process in a Non-Public Investigation of Unauthorized Charges to Consumers’ Accounts (File No. 082-3247).³ Pet. Ex. 1, ¶ 14; Pet. Ex. 2.
15. The 2017 CID required CMS to respond to document requests and interrogatories on or before September 20, 2017. Among other things, the 2017 CID seeks specific information and documents related to merchant accounts that CMS opened on behalf of defendants in FTC and other relevant law enforcement actions. Pet. Ex. 1, ¶ 15.
16. The 2017 CID included document requests seeking communications between (1) CMS and merchant-clients that were the subject of a law enforcement inquiry, (2) CMS and any third-party about those clients, or (3) between CMS employees and agents regarding those clients. They also cover other documents relating to CMS’s processing for such merchants, including underwriting files. Pet. Ex. 1, ¶ 16.
17. CMS’s communications and documents related to merchant-clients that are the subject of law enforcement inquiries bear directly on CMS’s knowledge of these clients’ activities, including whether these clients are charging consumers illegally or without authorization. Pet. Ex. 1, ¶ 17.
18. The Applicable Time Period in the 2017 CID extends “until the date of full and complete compliance with this CID.” As instructed by the CID, upon compliance, the recipient “must certify that such responses are complete by completing the ‘Form of Certificate of

³This same resolution was one of the three resolutions included in the 2019 CID. *Supra* ¶ 6.

Compliance’ set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.” Pet. Ex. 1, ¶ 18; Pet. Ex. 2 at 5.

19. CMS did not file a petition to limit or quash the 2017 CID. Pet. Ex. 1, ¶ 19.
20. CMS sought, and the FTC granted, an extension for CMS to respond to the 2017 CID, with CMS to produce all responsive documents and provide interrogatory responses by November 10, 2017. Pet. Ex. 1, ¶ 20.
21. CMS failed to meet this deadline. Among other things, CMS produced no responsive emails. Over the next few months, FTC counsel, including counsel in the FTC’s Office of General Counsel, engaged in a series of discussions with CMS to cure the company’s deficient production. These discussions uncovered unexpected obstacles, including that CMS had not properly run the FTC search terms, omitting some and using incorrect versions for others, further delaying CMS’s production. Pet. Ex. 1, ¶ 21.
22. Ultimately, CMS did not substantially complete its production of documents and interrogatory responses to the 2017 CID until August 2018, a year after receiving the 2017 CID. Pet. Ex. 1, ¶ 22.
23. CMS never provided the certification of compliance required by the CID and FTC Act. Pet. Ex. 1, ¶ 23.

CMS’s Refusal to Provide Documents and Information in Response to the 2017 CID

24. In August 2019, FTC counsel learned that CMS had received a law enforcement inquiry from the Utah Attorney General regarding the merchant accounts it provided to defendants in an action against a real estate seminar scheme brought by the Utah Division of Consumer Protection in this District on June 24, 2019. *Utah Div. of Consumer*

Protection v. Troy Stevens, No. 2:19-cv-00441-HCN (D. Utah 2019). Pet. Ex. 1, ¶¶ 24-25.

25. On August 14, 2019, FTC counsel sent a letter to CMS counsel, asking CMS to supplement its response to the 2017 CID with documents and interrogatory responses regarding the *Troy Stevens* merchant accounts. CMS did not do so. Pet. Ex. 1, ¶ 26; Pet. Ex. 3.
26. FTC counsel repeated its requests for documents and interrogatory responses regarding the *Troy Stevens* merchant accounts by email on September 5, 2019 and September 23, 2019. CMS did not produce any documents. Pet. Ex. 1, ¶ 27.
27. On September 30, 2019, the FTC and the Utah Division of Consumer Protection filed an action against another real estate seminar scheme in this District. *FTC v. Zurixx, LLC*, No. 2:19-cv-00713 (D. Utah 2019). Pet. Ex. 1, ¶ 28.
28. Separately, the FTC learned that CMS also provided payment processing services for individuals or entities that are the targets of two nonpublic ongoing FTC investigations (“FTC Investigation A” and “FTC Investigation B”).⁴ Pet. Ex. 1, ¶ 30.
29. On October 25, 2019 CMS counsel responded and stated that CMS was no longer required to comply with the 2017 CID. Pet. Ex. 1, ¶ 32; Pet. Ex. 6.
30. FTC counsel obtained certain information and documents regarding CMS’s processing services for the *Zurixx* defendants and the targets of FTC Investigations A and B through third-party CIDs to CMS in the FTC investigations, and through documents obtained by the FTC through the *Zurixx* investigation and litigation. Those documents and information, however, did not include internal CMS emails regarding those merchants,

⁴ The FTC is concurrently filing a Motion to Seal that seeks the Court’s permission to redact the names of these entities.

nor answers to interrogatories regarding CMS's processing for those merchants. Pet. Ex. 1, ¶ 33.

31. On November 5, 2019, the FTC and the Utah Division of Consumer Protection filed *FTC v. Nudge, LLC et al.* in this District. No. 2:19-cv-00867 (D. Utah 2019). CMS provided payment processing services to the defendants in the *Nudge* action. Pet. Ex. 1, ¶ 34.

The Commission's 2019 CID to CMS

32. Rather than engage in a further dispute over CMS's continued production obligations under the 2017 CID, on November 5, 2019, the Commission issued CMS a second CID for documents and information. Pet. Ex. 1, ¶ 35; Pet. Ex. 7. The CID required CMS to respond to document requests and interrogatories on or before November 19, 2019. Pet. Ex. 1, ¶ 43; Pet. Ex. 7 at 3.

33. The CID seeks documents and information about CMS's provision of payment processing services to the defendants in the *Troy Stevens, Zurixx* and *Nudge* matters, as well as CMS's services to the targets of FTC Investigations A and B. The specifications are closely modeled on Interrogatory 7 and Document Request 6 in the 2017 CID and are narrowly-tailored to obtain this information for the Commission's investigation. Pet. Ex. 1, ¶¶ 36-37; Pet. Ex. 7; Pet. Ex. 2.

34. This information is relevant to the FTC's investigation because CMS's communications and documents related to merchant-clients that are the subject of law enforcement inquiries bear directly on CMS's knowledge of these client's activities, including whether these clients are charging consumers illegally or without authorization. Pet. Ex. 1, ¶ 39.

35. Counsel for the FTC seek only those documents that CMS has not previously produced to the FTC. Pet. Ex. 1, ¶ 40; Pet. Ex. 7 at 16.

36. In issuing the 2019 CID, the Commission followed all the procedures and requirements of the FTC Act and its Rules of Practice and Procedure. *See, e.g.*, 15 U.S.C. §§ 57b-1(c)(2), (c)(3), (c)(7); 16 C.F.R. § 2.7. The CID was properly signed by Commissioner Rohit Chopra pursuant to the resolutions, as required by Section 20 of the FTC Act. *See* Pet. Ex. 7 at 3, 21-23; *see also* 15 U.S.C. § 57b-1(i); 16 C.F.R. § 4.4(a)(3).
37. The 2019 CID was served on CMS on November 8, 2019. Pet. Ex. 1, ¶ 42; Pet. Ex. 8. FTC counsel provided CMS's counsel with a courtesy copy on November 6, 2019. Pet. Ex. 1, ¶ 42; Pet. Ex. 9.
38. The deadline for CMS to file a petition to limit or quash the 2019 CID was November 19, 2019. 16 C.F.R. § 2.10(a)(1). CMS did not file any such petition. Pet. Ex. 1, ¶ 44.
39. On November 15, 2019, CMS and FTC counsel conferred by phone regarding the 2019 CID. CMS counsel indicated that it would not meet the CID's response date, but it would produce CMS's *Troy Stevens* underwriting files the following week and would provide more information about the scope of CMS's prior searches of its email system. Pet. Ex. 1, ¶ 45.
40. Rather than produce the *Troy Stevens* underwriting files, CMS counsel instead sent FTC counsel a letter on November 19, 2019 [REDACTED] [REDACTED] Pet. Ex. 10. CMS did not seek an extension of the return date of the 2019 CID, nor did it file a petition to modify or quash the CID. Pet. Ex. 1, ¶ 46.
41. On November 22, 2019 contrary to the CID's instructions, CMS reproduced documents that it had previously produced in response to third-party CIDs issued in FTC Investigations A and B. Pet. Ex. 1, ¶ 47.

42. Also on November 22, 2019, FTC counsel sent CMS a letter noting that CMS had failed to comply with the 2019 CID. FTC counsel set forth a modified schedule by which CMS should comply with the CID, and attached a list of search terms that CMS should run in its email system to ensure that potentially responsive emails were located. FTC counsel also explained why the *Troy Stevens* files were relevant to the FTC's ongoing investigation of CMS's business practices. Pet. Ex. 1, ¶ 48; Pet. Ex. 11.
43. CMS did not respond to the FTC's modified CID production schedule. Instead, at a December 4, 2019 phone conference, CMS counsel stated that CMS was not prepared to discuss whether it would ultimately comply with the CID. Pet. Ex. 1, ¶ 49.
44. After the December 4, 2019 call, FTC counsel sent CMS a letter stating that CMS had failed to meet its obligations to respond to the 2019 CID and that, unless CMS complied with the CID by December 13, 2019, FTC counsel would proceed to seek judicial enforcement of the CID. Pet. Ex. 1, ¶ 50; Pet. Ex. 12.
45. On December 5, 2019, without prior notice to the FTC, CMS filed a declaratory judgment action in this District, seeking to obtain a judicial finding that CMS is not in violation of Sections 45(a) and 53(b) of the FTC Act. *CMS v. FTC*, No. 19-cv-00963 (D. Utah, 2019). Pet. Ex. 1, ¶ 51.
46. On December 13, CMS counsel sent FTC counsel a letter stating that CMS would not comply with the 2019 CID. Pet. Ex. 1, ¶ 53; Pet. Ex. 14.
47. CMS's refusal to comply with the 2019 CID has burdened, delayed, and impeded the FTC's investigation into CMS's payment processing-related conduct in connection with the various schemes described above. Pet. Ex. 1, ¶ 54.

MEMORANDUM OF LAW

Introduction

The FTC's 2019 CID to CMS seeks information—materials relating to CMS's dealings with its alleged fraudster-clients—that bears directly on the FTC's inquiry whether CMS itself engaged in law violations. In an effort to impede the Commission's investigation, CMS has refused to comply with the 2019 CID. CMS, however, has not advanced any principled reason for its refusal to comply. Nor has it sought the proper administrative remedy by filing a petition to quash. And, in a further effort to throw sand in the Commission's gears, CMS has now filed a declaratory judgment action attempting to forestall any potential law enforcement action. The FTC will respond to that filing in due course and show why CMS is not entitled to relief. But nothing that CMS alleges in that complaint or that CMS might claim in this proceeding undermines the FTC's authority to obtain the information it needs for its investigation.⁵

As we describe below, the FTC has plainly satisfied the test for enforcement of its compulsory process, and CMS has waived objections to the 2019 CID by failing to exhaust administrative remedies. For these reasons, the Court should grant the FTC's petition and enforce its CID.

⁵ Most pertinent here, CMS's declaratory judgment action is not the proper forum for any challenge to the Commission's CID. As the Supreme Court and other courts have recognized, by including provisions for judicial enforcement in the FTC Act, *see* 15 U.S.C. § 57b-1, Congress provided the exclusive method by which a recipient may seek judicial relief from a CID. Any other challenges brought apart from this statutory process are thus outside of the district court's jurisdiction to consider. *FTC v. Claire Furnace Co.*, 274 U.S. 160, 173-74 (1927); *Reisman v. Caplin*, 375 U.S. 440, 446 (1964); *accord Google, Inc. v. Hood*, 822 F.3d 212, 225 (5th Cir. 2016); *Schulz v. Internal Revenue Service*, 395 F.3d 463, 464-65 (2d Cir. 2005); *Office of Thrift Supervision, Dept. of Treasury v. Dobbs*, 931 F.2d 956, 957 (D.C. Cir. 1991); *Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 334-35 (10th Cir. 1984); *Wearly v. FTC*, 616 F.2d 662, 665 (3d Cir. 1980); *American Motors Corp. v. FTC*, 601 F.2d 1329, 1335-37 (6th Cir. 1979); *Blue Ribbon Quality Meats, Inc. v. FTC*, 560 F.2d 874, 876 (8th Cir. 1977); and *Howfield, Inc. v. United States*, 409 F.2d 694, 697 (9th Cir. 1969).

I. An Administrative Subpoena Issued Pursuant to a Legitimate Investigation and Seeking Reasonably Relevant Information Should be Summarily Enforced.

An agency may obtain judicial enforcement of an administrative subpoena⁶ if the agency can show that the “demand is not too indefinite and the information sought is reasonably relevant to an investigation which the agency has the authority to conduct, and all administrative prerequisites have been met.” *SEC v. Blackfoot Bituminous, Inc.*, 622 F.2d 512, 514 (10th Cir. 1980) (citing *U.S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). Once an agency meets its initial burden, the burden shifts to the respondent to show cause why it should not have to comply with the subpoena. *Solis v. CSG Workforce Partners LLC*, 2:11-cv-903, 2012 WL 1379310 at *2 (D. Utah April 20, 2012); *SEC v. Blackfoot Bituminous, Inc.*, 622 F.2d at 515 (“the burden of showing abuse is on respondents.”).

Like any administrative agency, the FTC has broad authority to “investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950). A court’s role in a proceeding to enforce an agency’s investigative process is thus “strictly limited.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 871-72 (D.C. Cir. 1977) (*en banc*) (citing *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501 (1943)). While the court’s function is “neither minor nor ministerial,” the scope of issues which may be litigated in a [compulsory process] enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity.” *Id.* at 872 (internal quotations omitted).

⁶ The FTC’s civil investigative demands are a form of administrative subpoena. *See, e.g., FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1087 (D.C. Cir. 1992).

Accordingly, actions enforcing administrative process are “to be handled summarily and with dispatch[,]” so that valid subpoenas may be speedily enforced. *See In re: Office of the Inspector Gen’l, R.R. Retirement Bd.*, 933 F.2d 276, 277 (5th Cir. 1991); *SEC v. First Security Bank*, 447 F.2d 166, 168 (10th Cir. 1971); *see also Texaco*, 555 F.2d at 872 (“[T]he ‘very backbone of an administrative agency’s effectiveness in carrying out the congressionally mandated duties of industry regulation is the rapid exercise of the power to investigate” (quoting *FMC v. Port of Seattle*, 521 F.2d 431, 433 (9th Cir. 1975)). And, since administrative subpoena enforcement proceedings should be summary in nature and limited in scope, plenary procedures such as discovery are therefore disfavored. *Solis*, 2012 WL 1379310 at *2 (citing *EEOC v. Dillon Companies, Inc.*, 310 F.3d 1271, 1277 (10th Cir. 2002) (the 10th Circuit will not “either encourage or allow . . . a summary subpoena-enforcement proceeding [to turn] into a mini-trial”); *see also FTC v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980).

II. The 2019 CID is Within the Commission’s Authority, Seeks Relevant Documents, and is Neither Indefinite nor Overly Burdensome.

The 2019 CID satisfies all the elements governing enforcement of FTC compulsory process. It is well within the Commission’s authority, was properly issued, seeks information and documents relevant to the Commission’s investigation, and is neither indefinite nor overly burdensome.

A. The 2019 CID is Within the Commission’s Authority and Was Properly Issued According to All Administrative Prerequisites.

The Commission lawfully and properly issued the 2019 CID as part of an investigation into whether CMS and associated entities and individuals have violated the FTC Act. The FTC’s authority to investigate and proceed against payment processors such as CMS for unfair or deceptive acts or practices is well-established. *See, e.g., FTC v. Universal Management, LLC*,

877 F.3d 1234 (11th Cir. 2017); *FTC v. Wells*, 385 Fed. Appx. 712 (9th Cir. 2010); *FTC v. Neovi*, 604 F.3d 1150 (9th Cir. 2010).

To this end, the Commission issued the CID under Section 20 of the FTC Act, 15 U.S.C. § 57b-1, which authorizes the Commission to issue CIDs “[w]henver the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices.” 15 U.S.C. § 57b-1(c)(1). In so doing, the Commission acted under no fewer than three valid agency resolutions authorizing the issuance of compulsory process to investigate the very types of conduct at issue here. Pet. Ex. 1, ¶ 41, n.4, Pet. Ex. 7 at 21-23. Finally, the Commission issued the 2019 CID consistent with all governing administrative prerequisites. Pet. Ex. 1, ¶ 41-43, Pet. Ex. 7; 15 U.S.C. §§ 57b-1(c)(2), (c)(3), (c)(7), (i) (requirements for form, content, and service of CIDs); *accord* 16 C.F.R. § 2.7(a), (b).

B. The Documents and Information Sought are Relevant to the Commission’s Investigation.

Administrative compulsory process is not limited to seeking information necessary to prove specific charges; to the contrary, a CID may call for documents and information that are “relevant to the investigation” – a boundary that may be broadly defined by the agency. *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992); *see also Solis*, 2012 WL 1379310 at *3 (citing *Phillips Petroleum Co. v. Lujan*, 951 F.2d 257, 260 (10th Cir. 1991)). So long as the requested information “touches a matter under investigation,” it will survive a relevancy challenge. *Sandsend Financial Consultants, Ltd. v. Federal Home Loan Bank Bd.*, 878 F.2d 875, 882 (5th Cir. 1989) (quoting *EEOC v. Elrod*, 674 F.2d 601, 613 (7th Cir. 1982)). The FTC’s determination that information is relevant to its investigation should be accepted unless it is “obviously wrong.” *Invention Submission*, 965 F.2d at 1089.

As stated in the 2019 CID, the subject of the FTC’s investigation is whether CMS and affiliated entities and individuals have engaged in deceptive or unfair acts or practices by providing payment processing services when they knew or should have known that charges to consumers’ accounts were unauthorized or obtained illegally, or by assisting and facilitating violations of the TSR. Pet. Ex. 7 at 6; 15 U.S.C. § 57b-1(c)(2). The 2019 CID’s statement of the conduct under investigation is congruous with three authorizing resolutions issued by the Commission. Pet. Ex. 7 at 6, 21-23.

The 2019 CID seeks information that goes to the heart of the FTC’s investigation of CMS. It requires CMS to produce documents and respond to interrogatories about specified CMS merchant-clients that are currently under investigation or that are the subject of law enforcement proceedings for unfair or deceptive practices. Pet. Ex. 7 at 6-14. Reviewing CMS’s documents and answers to interrogatories with respect to these merchants will help the FTC assess what role, if any, CMS played in these unfair or deceptive practices. Pet. Ex. 1, ¶ 39. As such, these requests more than meet the “broad” and “relaxed” standard of relevance that applies in administrative investigations. *Invention Submission*, 965 F.2d at 1090. Indeed, they aim directly at the central question of whether CMS may be held liable for its conduct involving these merchant-clients. *See generally Texaco*, 555 F.2d at 874. Accordingly, the information sought is reasonably relevant to the FTC’s investigation of CMS.

C. The CID is Neither Indefinite Nor Overly Burdensome.

A CID is sufficiently definite when it describes the required information such “that a person can in good faith understand which documents must be produced.” *RTC v. Greif*, 906 F. Supp. 1446, 1452 (D. Kan. 1995) (citing *In re Grand Jury Proceedings*, 601 F.2d 162 (5th Cir. 1979)); *cf.* 15 U.S.C. § 57b-1(c)(3)(A) (FTC CIDs for documents must identify the material to be

produced “with such definiteness and certainty as to permit such material to be fairly identified”). The 2019 CID meets this definition because all of its specifications and definitions are plainly expressed and easily understandable. Indeed, CMS has never argued otherwise.

Moreover, any alleged imprecision in the CID would not give rise to a claim of undue burden. To establish such a claim, CMS would have to show that compliance with the FTC’s CID “threatens to unduly disrupt or seriously hinder [the] normal operations of [its] business.” *Texaco, Inc.*, 555 F.2d 882 & n.52. CMS has no basis to make such a claim. The 2019 CID seeks documents and information about five specific sets of merchant-clients for which CMS has provided payment processing services, for a limited time period that applies to all but one specification of the 2019 CID. Pet. Ex. 7 at 6, 11. The 2019 CID also prescribed a reasonable return date of two weeks from the date of issuance. This deadline was more than reasonable for CMS to assemble the specified documents and prepare its responses to interrogatories, especially given the fact that the FTC first notified CMS of its interest in certain of these merchant-clients over three months before the 2019 CID’s return date. Pet. Ex. 1, ¶ 26. And, although staff invited CMS to do so, CMS never sought any extension or modification of the time to respond on *any* grounds, including burden.

III. CMS Has Waived Any Challenges to the 2019 CID by Failing to Raise Them Before the FTC.

CMS has waived any challenges it may have made to the 2019 CID. It is a longstanding principle of law that a party must exhaust its administrative remedies before seeking relief in court. *McKart v. United States*, 395 U.S. 185, 193-94 (1965); *E.E.O.C. v. Cuzzens of Georgia, Inc.*, 608 F.2d 1062, 1063 (5th Cir. 1979) (“Generally, one who has neglected the exhaustion of available administrative remedies may not seek judicial relief.”); *accord Forest Guardians v. US Forest Service*, 641 F.3d 423, 433 (10th Cir. 2011) (“Claims not properly raised before an

agency are waived, unless the problems underlying the claim are ‘obvious’ or otherwise brought to the agency’s attention.”) (citing *Forest Guardians v. US Forest Serv.*, 495 F.3d 1162, 1170 (10th Cir. 2007) (quoting *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752, 764 (2004))).

That principle applies equally to FTC compulsory process enforcement. *See, e.g., United States v. Morton Salt Co.*, 338 U.S. 632, 653-54 (1950); *American Motors Corp. v. FTC*, 601 F.2d 1329, 1332-37 (6th Cir. 1979); *FTC v. O’Connell Assocs., Inc.*, 828 F. Supp. 165, 168-70 (E.D.N.Y. 1993); *FTC v. Tracers Information Specialists, Inc.*, No. 8:16-mc-00018-VMC-TGW, 2016 WL 3896840, at *4 (M.D. Fla. June 10, 2016). Congress and the FTC have provided CID recipients with an administrative remedy to quash or narrow the request, *see* 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10, and the failure to use that remedy thus waives any challenge to the CID. The “failure to comply with the administrative procedure provided by the statute and the implementing regulations bars . . . assertion of substantive objections to the CID in court.” *Tracers*, 2016 WL 3896840, at *4; *see also O’Connell Assocs., Inc.*, 828 F. Supp. at 170.

CMS had ample opportunity to raise any concerns it may have with the 2019 CID with the Commission, but it chose not to do so. CMS has never petitioned the FTC to limit or quash the 2019 CID. In fact, CMS neither sought an extension of the return date nor asked to modify the CID. Instead, nearly one month after the 2019 CID’s return date, CMS simply informed staff that it did not intend to comply with the 2019 CID, *at all*. Having failed to avail itself of administrative remedies, CMS may not now assert any objections it could have raised to the Commission as defenses in this CID enforcement proceeding.

Prayer For Relief

WHEREFORE, the Commission invokes the aid of this Court and prays:

- a. For the immediate issuance of an order directing CMS to appear and show cause why it should not comply in full with the 2019 CID;
- b. For a prompt determination of this matter and an order requiring CMS to fully comply with the 2019 CID within ten (10) days of such order, or at such later date as may be established by the Commission; and
- c. For such other relief as this Court deems just and proper.

Dated: December 23, 2019

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

Michele Arington
Assistant General Counsel for Litigation

/s/ Christine M. Todaro
Christine M. Todaro
Laura Basford
Benjamin R. Davidson

Attorneys for Petitioner

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Federal Trade Commission

DEFENDANTS

Complete Merchant Solutions, LLC

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Utah County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michele Arington, Christine M. Todaro, Laura Basford, Benjamin R. Davidson; FTC, 600 Pennsylvania Ave. NW, Washington DC 20580, 202-326-3157/3711/2343/3055

Attorneys (If Known)

See attachment.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
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

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. 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 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. §§ 57b-1(e)

Brief description of cause:

Judicial enforcement of administrative compulsory process

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Cecilia M. Romero

DOCKET NUMBER 2:19-cv-00963-CMR

DATE
12/23/2019

SIGNATURE OF ATTORNEY OR RECORD

Christine M. Todaro

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Attorneys for Complete Merchant Solutions, LLC

Allison W. Buchner – Kirkland & Ellis LLP

333 South Hope Street, 29th Floor, Los Angeles, CA 90071, 213-680-8154

Matthew Gamsin – Kirkland & Ellis LLP

333 South Hope Street 29th Floor, Los Angeles, CA 90071, 213-680-8146

Mark C. Holscher – Kirkland & Ellis LLP

333 South Hope Street, 29th Floor, Los Angeles, CA 90071, 213-680-8190

555 California Street, 27th Floor, San Francisco, CA 94104, 415-439-1998

Kristin Rose – Kirkland & Ellis LLP

333 South Hope Street, 29th Floor, Los Angeles, CA 90071, 213-680-8169

Diana Torres – Kirkland & Ellis LLP

333 South Hope Street, 29th Floor, Los Angeles, CA 90071, 213-680-8338

3330 Hillview Avenue, Palo Alto, CA 94304, 650-859-7088

Jess M. Krannich – Manning Curtis Bradshaw & Bendar PLLC

136 E S Temple #1300, Salt Lake City, UT 84111, 801-303-0034

Timothy J. Muris – Sidley Austin LLP

1501 K Street, N.W. Washington, D.C. 20005, 202-736-8939

Andrew J. Strenio - Sidley Austin LLP

1501 K Street, N.W. Washington, D.C. 20005, 202-736-8614

Petition Exhibit 1

Declaration of Dotan Weinman

(December 23, 2019)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

FEDERAL TRADE COMMISSION,

Petitioner,

v.

COMPLETE MERCHANT SOLUTIONS, LLC

Respondent.

DECLARATION OF DOTAN WEINMAN

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the U.S. Federal Trade Commission (“FTC” or “Commission”), in Washington, D.C. I am an Assistant Director in the Division of Marketing Practices and I manage the FTC’s investigation of Complete Merchant Solutions, LLC (“CMS”); FTC File No. 1723020.
2. The purpose of the investigation is to determine whether CMS, and its current and former officers and managers in their individual capacity, have engaged in deceptive or unfair acts or practices by providing payment processing services to merchants engaged in fraud. If CMS assisted or facilitated these merchants by processing payments from consumers that were either unauthorized or otherwise obtained illegally, this could violate the Telemarketing Sales Rule, 16 C.F.R. Part 310, or Section 5 of the FTC Act, 15 U.S.C. § 45.
3. I am authorized to execute a declaration verifying the facts that are set forth in the Petition of the Federal Trade Commission to Enforce Civil Investigative Demand. I have read the petition and exhibits thereto (hereinafter referred to as Pet. Ex.), and verify that Pet. Ex. 2 through Pet. Ex. 14 are true and correct copies of the original documents. The facts set forth

herein are based on my personal knowledge or information made known to me in the course of my official duties.

4. The FTC is commencing this proceeding to enforce a civil investigative demand (“CID”) it issued to CMS. The CID requires CMS to produce documents and interrogatory responses regarding five groups of merchants to whom CMS provided payment processing services. The return date for the CID was November 19, 2019. CMS has failed and refused to produce interrogatory responses and documents sought by the CID.

5. The FTC has spent many weeks attempting, unsuccessfully, to convince CMS to abide by its CID obligations. Ultimately, on December 13, 2019, CMS informed FTC counsel that it does not intend to comply with the CID.

Background

6. CMS is a Utah limited liability company, headquartered in Orem, Utah. CMS thus resides, is found, and transacts business in this District.

7. CMS provides payment processing services for merchants. These services involve helping merchants obtain and maintain merchant accounts, so that those merchants can accept consumers’ payments by credit and debit card.

8. Merchant accounts are available through financial institutions referred to as acquiring banks or “acquirers” that are members of the card networks (e.g., Mastercard and Visa). Without access to a merchant account through an acquirer, merchants cannot accept consumer credit or debit card payments.

9. The FTC started investigating CMS after discovering that CMS provided payment processing services for a significant number of FTC defendants engaged in unfair and deceptive

practices, allowing those merchants the ability to accept consumers' credit and debit card payments.

10. For example, FTC counsel has learned that CMS provided payment processing services for defendants in the following FTC enforcement actions:

- a. *FTC et al. v. Affiliate Strategies, Inc.*, No. 5:09-cv-04104 (D. Kan. 2009) (government grants scheme involving unlawful telemarketing; FTC obtained monetary and injunctive relief);
- b. *FTC v. Jeremy Johnson*, No. 10-2203 (D. Nev. 2010) (government grants and business opportunity scheme involving unauthorized charges on consumers' credit and debit accounts; FTC obtained monetary and injunctive relief);
- c. *FTC v. Ivy Capital Inc.*, No. 11-cv-00283 (D. Nev. 2011) (business coaching scheme involving unlawful telemarketing; FTC obtained monetary and injunctive relief);
- d. *FTC v. LeanSpa, LLC*, No. 11-01715 (D. Conn 2011) (nutraceuticals sold using false health claims and with undisclosed payment terms; FTC obtained monetary and injunctive relief);
- e. *FTC v. Apply Knowledge, LLC*, No. 14-88 (D. Utah 2014) (business coaching scheme involving unlawful telemarketing; FTC obtained monetary and injunctive relief);
- f. *FTC v. Lift International LLC*, No. 17-cv-00506 (D. Utah 2017) (business coaching scheme involving unlawful telemarketing; FTC obtained monetary and injunctive relief);

- g. *FTC v. Thrive Learning LLC*, No. 17-cv-00529 (D. Utah 2017) (business coaching scheme involving unlawful telemarketing; FTC obtained monetary and injunctive relief);
 - h. *FTC v. Tarr Inc.*, No. 17-cv-02024 (S.D. Cal. 2017) (nutraceuticals sold through a deceptive trial offer; FTC obtained monetary and injunctive relief);
 - i. *FTC v. Elite IT Partners, Inc.*, No. 2:19-cv-00125 (D. Utah 2019) (deceptive tech support scheme; FTC obtained monetary and injunctive relief);
 - j. *FTC v. Zurixx, LLC*, No. 2:19-cv-00713 (D. Utah 2019) (deceptive real estate seminars scheme; currently pending); and
 - k. *FTC v. Nudge, LLC*, No. 2:19-cv-00867 (D. Utah 2019) (deceptive real estate seminars scheme; currently pending).
11. FTC counsel has also learned that CMS provided payment processing services for defendants in the following SEC enforcement actions:
- a. *SEC v. Gryphon Holdings, Inc.*, No. 10-cv-01742 (E.D.N.Y. 2010) (internet-based investment consulting scam; SEC obtained injunctive relief; monetary relief obtained in sister criminal action, *US v. Marsh et al.*);
 - b. *SEC v. Zhunrize, Inc.*, No. 1:14-cv-03030-RWS (N.D. Ga. 2014) (pyramid scheme; SEC obtained monetary and injunctive relief); and
 - c. *SEC v. Steve Chen*, No. 15-cv-07425 (C.D. Cal. 2015) (pyramid scheme; SEC obtained monetary and injunctive relief).
12. CMS also provided payment processing services for defendants in the following Department of Justice enforcement actions:

- a. *US v. Marsh*, No. 10-cr-00480 (E.D.N.Y. 2010) (wire, securities, and investor fraud; U.S. obtained monetary relief and defendants sentenced to prison);
 - b. *US v. The Zaken Corp.*, No. 12-cv-09631 (C.D. Cal. 2012) (business opportunity scheme; U.S. obtained monetary and injunctive relief); and
 - c. *US v. McNeil*, No. 16-cr-00466 (E.D. Mo. 2016) (fraudulent business opportunities; U.S. obtained monetary relief and defendant sentenced to prison).
13. CMS also provided payment processing services for a Utah-based real estate seminar scheme recently sued by the Utah Division of Consumer Protection. *Utah Div. of Consumer Protection v. Troy Stevens*, No. 2:19-cv-00441 (D. Utah 2019) (dismissed for lack of standing after the court issued a temporary restraining order against defendants), refiled in state court at *Utah Div. of Consumer Protection v. Troy Stevens*, No. 190907053 (3d Jud. Dist. Ct., Salt Lake County 2019). The case is ongoing.

The Commission's 2017 CID to CMS

14. The Commission first issued a CID to CMS in August 2017 (“2017 CID”) for documents and information pursuant to the Commission’s Resolution Directing Use of Compulsory Process in a Non-Public Investigation of Unauthorized Charges to Consumers’ Accounts (File No. 082-3247).¹

¹ This Resolution authorizes the Commission to use compulsory process “[t]o determine whether unnamed persons, partnerships, corporations, or others have engaged in, or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers’ accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods and services.” Pet. Ex. 2 at 21.

15. The 2017 CID required CMS to respond to document requests and interrogatories on or before September 20, 2017. *Id.* Among other things, the 2017 CID seeks specific information and documents related to merchant accounts that CMS opened on behalf of defendants in FTC and other relevant law enforcement actions. *Id.* at Document Request No. 6; Interrogatory 7.

16. The 2017 CID included document requests seeking communications between (1) CMS and merchant-clients that were the subject of a law enforcement inquiry, (2) CMS and any third-party about those clients, or (3) between CMS employees and agents regarding those clients. They also cover other documents relating to CMS's processing for such merchants, including underwriting files.

17. CMS's communications and documents related to Merchant-clients that are the subject of law enforcement inquiries bear directly on CMS's knowledge of these clients' activities, including whether these clients are charging consumers illegally or without authorization.

18. The Applicable Time Period in the 2017 CID extends "until the date of full and complete compliance with this CID." *Id.* at 6. As instructed by the CID, upon compliance, the recipient "must certify that such responses are complete by completing the 'Form of Certificate of Compliance' set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746." *Id.* at 5; *see also* 15 U.S.C. §§ 57b-1(c)(11), (c)(13).

19. CMS did not file a petition to limit or quash the 2017 CID. *See* 16 C.F.R. § 2.10(a).

20. CMS sought, and the FTC granted, an extension for CMS to respond to the 2017 CID, with CMS to produce all responsive documents and provide interrogatory responses by November 10, 2017.

21. CMS failed to meet this deadline. Among other things, CMS produced no responsive emails. Over the next few months, FTC counsel, including counsel in the FTC's Office of

General Counsel, engaged in a series of discussions with CMS to cure the company's deficient production. These discussions uncovered unexpected obstacles, including that CMS had not properly run the FTC search terms, omitting some and using incorrect versions for others, further delaying CMS's production.

22. Ultimately, CMS did not substantially complete its production of documents and interrogatory responses to the 2017 CID until August 2018, a year after receiving the 2017 CID.

23. CMS never provided the certification of compliance required by the CID and FTC Act.

CMS's Refusal to Provide Documents and Information in Response to the 2017 CID

24. In late July 2019, FTC counsel learned that CMS provided payment processing services for merchants owned or controlled by the defendants in an action against a real estate seminar scheme brought by the Utah Division of Consumer Protection in this District on June 24, 2019.

Utah Div. of Consumer Protection v. Troy Stevens, et al., No. 19-cv-00441-HCN (D. Utah 2019).

CMS did not stop providing payment processing services to the *Troy Stevens* defendants until after that action was filed, in July 2019.

25. In August 2019, FTC counsel learned that CMS had received a law enforcement inquiry from the Utah Attorney General regarding the merchant accounts it provided to the *Troy Stevens* defendants.

26. On August 14, 2019, FTC counsel sent a letter to CMS counsel, asking CMS to supplement its response to the 2017 CID with documents and interrogatory responses regarding the *Troy Stevens* merchant accounts. Pet. Ex. 3. CMS did not do so.

27. FTC counsel repeated its requests for documents and interrogatory responses regarding the *Troy Stevens* merchant accounts by email on September 5, 2019 and September 23, 2019.

CMS did not produce any documents.

28. On September 30, 2019, the FTC and the Utah Division of Consumer Protection filed an action against another real estate seminar scheme in this District. *FTC v. Zurixx*, No. 19-cv-00713 (D. Utah 2019).

29. The FTC learned that CMS provided payment processing services to the defendants in the *Zurixx* action. The FTC also learned that, in addition to opening merchant accounts under Zurixx's name, CMS opened a merchant account for the *Zurixx* defendants under the name of Chuckanut Bay Investments, LLC.

30. Separately, the FTC learned that CMS also provided payment processing services for individuals or entities that are the targets of two nonpublic ongoing FTC investigations ("FTC Investigation A" and "FTC Investigation B").²

31. The FTC sent follow-up requests to CMS on October 10, 2019 and October 21, 2019. These requests asked CMS to supplement its response to the 2017 CID with documents and interrogatory responses regarding merchant accounts it provided to the *Troy Stevens* and *Zurixx* defendants and the targets of FTC Investigations A and B. Pet. Exs. 4, 5.³

32. On October 25, 2019 CMS counsel responded and stated that CMS was no longer required to comply with the 2017 CID. Pet. Ex. 6.

33. FTC counsel obtained certain information and documents regarding CMS's processing services for the *Zurixx* defendants and the targets of FTC Investigations A and B through third-

² The FTC is concurrently filing a Motion to Seal that seeks the Court's permission to redact the names of these entities.

³ As explained in the October 21 letter, the 2017 CID requires CMS to provide responses to interrogatories and produce documents relating to Merchant-clients who are the subject of any law enforcement inquiry to CMS, and CMS received law enforcement inquiries from the FTC in the *Zurixx* litigation and in FTC Investigations A and B.

party CIDs to CMS in the FTC investigations, and through documents obtained by the FTC through the *Zurixx* investigation and litigation. Those documents and information, however, did not include internal CMS emails regarding those merchants, nor answers to interrogatories regarding CMS's processing for those merchants.

34. On November 5, 2019, the FTC and the Utah Division of Consumer Protection filed *FTC v. Nudge, LLC et al.* in this District. No. 2:19-cv-00867 (D. Utah 2019). CMS provided payment processing services to the defendants in the *Nudge* action, and previously had received an FTC CID regarding the *Nudge* merchant accounts in the FTC investigation.

The Commission's 2019 CID to CMS

35. Rather than engage in yet another dispute over CMS's continued production obligations under the 2017 CID, on November 5, 2019, the Commission issued CMS a second CID for documents and information. Pet. Ex. 7.

36. The CID seeks documents and information about CMS's provision of payment processing services to the defendants in the *Troy Stevens*, *Zurixx* and *Nudge* matters, as well as CMS's services to the targets of FTC Investigations A and B. The specifications are closely modeled on Interrogatory 7 and Document Request 6 in the 2017 CID and are narrowly-tailored to obtain this information for the Commission's investigation.

37. Document Request No. 1 in the 2019 CID seeks:

For each Merchant-client on whose behalf [CMS] opened a Subject Account...:

- a. All communications between the Company and the Merchant-client;
- b. All communications, whether between persons within the Company or between the Company and any third party, relating to the Merchant-client....

- c. All applications, contracts, agreements, memoranda of understanding, or other Documents between the Company and the Merchant-client, including, but not limited to, all materials provided by the Merchant-client in connection with an application to the Company for the provision of Payment Processing services, ...and
- d. All other documents relating to the Merchant-client.

Id. at 11.

38. The 2019 CID narrowly defines “Subject Account” as merchant accounts that CMS opened for the corporate defendants in the *Troy Stevens*, *Zurixx* and *Nudge* cases, and for the corporate targets in FTC Investigations A and B. “Subject Account” also includes any merchant account to which one of the individual defendants or targets was a signatory or “had other authority that is comparable to signatory authority.” *Id.* at 6, 8. The 2019 CID also seeks documents and information about Merchant-clients of CMS that are the subject of a law enforcement inquiry to the company on or after November 1, 2019. *Id.* at 11.

39. This information is relevant to the FTC’s investigation because CMS’s communications and documents related to Merchant-clients that are the subject of law enforcement inquiries bear directly on CMS’s knowledge of these client’s activities, including whether these clients are charging consumers illegally or without authorization.

40. The 2019 CID provides that “[i]f any Documents responsive to this CID have been previously supplied to the FTC, You may identify the Documents previously provided and the date of submission.” *Id.* at 16. Counsel for the FTC seek only those documents that CMS has not previously produced to the FTC.

41. The 2019 CID was authorized by the same Commission resolution that authorized the 2017 CID, and two other resolutions.⁴ See ¶ 14, *supra*; Pet. Ex. 7 at 21-23.

42. The 2019 CID was served on CMS on November 8, 2019. Pet. Ex. 8. FTC counsel provided CMS's counsel with a courtesy copy on November 6. Pet Ex. 9.

43. The CID required CMS to respond to document requests and interrogatories on or before November 19, 2019. Pet. Ex. 7 at 3.

44. The deadline for CMS to file a petition to limit or quash the 2019 CID was November 19, 2019. 16 C.F.R. § 2.10(a). CMS did not file any such petition.

45. On November 15, 2019, CMS and FTC counsel conferred by phone regarding the 2019 CID. CMS counsel indicated that it was not going to meet the CID's response date, but it would produce CMS's *Troy Stevens* underwriting files the following week and would provide more information about the scope of CMS's prior searches of its email system.

⁴ See Resolution Directing Use of Compulsory Process in a NonPublic Investigation of Telemarketers, Sellers, Suppliers or Others (File No. 012 3145). This Resolution authorizes the Commission to use compulsory process “[t]o determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission’s Telemarketing Sales Rule, 16 C.F.R. pt 310 (as Amended), including but not limited to the provision of substantial assistance or support – such as mailing lists, scripts, merchant accounts, and other information, products, or services – to telemarketers engaged in unlawful practices.” Pet. Ex. 7 at 21.

See also Resolution Directing Use of Compulsory Process in Non-Public Investigation of Unnamed Persons, Partnerships or Corporations Engaged in the Deceptive Or Unfair Use of E-mail, Metatags, Computer Code or Programs, or Deceptive or Unfair Practices Involving Internet-Related Goods or Services (File No. 9923259). This Resolution authorizes the Commission to use compulsory process “[t]o determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services.” Pet. Ex. 7 at 22.

46. Rather than produce the *Troy Stevens* underwriting files, CMS counsel instead sent FTC counsel a letter on November 19 [REDACTED]

Pet. Ex. 10. CMS did not seek an extension of the return date of the 2019 CID, nor did it file a petition to modify or quash the CID.

47. On November 22, 2019, contrary to the CID's instructions, CMS reproduced documents that it had previously produced in response to CIDs issued in FTC Investigations A and B.

48. Also on November 22, 2019, FTC counsel sent CMS a letter noting that CMS had failed to comply with the 2019 CID. FTC counsel set forth a modified schedule by which CMS should comply with the CID, and attached a list of search terms that CMS should run in its email system to ensure that potentially responsive emails were located. Pet. Ex. 11. FTC counsel also explained why the *Troy Stevens* files were relevant to the FTC's ongoing investigation of CMS's business practices. *Id.*

49. CMS did not respond to the FTC's modified CID production schedule. Instead, at a December 4, 2019 phone conference, CMS counsel stated that CMS was not prepared to discuss whether it would ultimately comply with the CID.

50. After the December 4, 2019 call, FTC counsel sent CMS a letter stating that CMS had failed to meet its obligations to respond to the 2019 CID and that, unless CMS complied with the CID by December 13, 2019, FTC counsel would proceed to seek judicial enforcement of the CID. Pet. Ex. 12.

51. On December 5, 2019, without prior notice to the FTC, CMS filed a declaratory judgment action in this District, seeking to obtain a judicial finding that CMS is not in violation of Sections 45(a) and 53(b) of the FTC Act. *CMS v. FTC*, No. 19-cv-00963 (D. Utah. 2019).

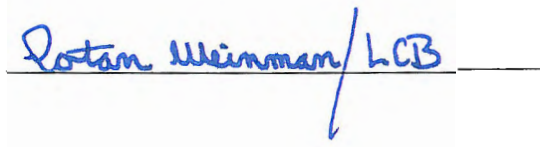
52. Also on December 5, 2019, CMS sent FTC counsel a letter stating that it was “considering whether and how to further respond” to the 2019 CID, and that it would contact FTC counsel the following week with more information. Pet. Ex. 13.

53. On December 13, 2019, CMS counsel sent FTC counsel a letter stating that CMS would not comply with the 2019 CID. Pet. Ex. 14.

54. CMS’s refusal to comply with the 2019 CID has burdened, delayed, and impeded the FTC’s investigation into CMS’s payment processing-related conduct in connection with the various schemes described above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 23, 2019

A handwritten signature in blue ink, reading "Rostan Weinman/LCB", is written over a horizontal line. The signature is cursive and includes a vertical stroke that extends downwards from the end of the line.

Petition Exhibit 2

Civil Investigative Demand to Complete Merchant Solutions, LLC

(August 18, 2017)



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

AUG 21 2017

Via Federal Express

David M. Decker
President & CEO
Complete Merchant Solutions, LLC
815 W University Pkwy
Orem, UT 84058

FTC Matter No. 1723020

To Whom It May Concern:

The Federal Trade Commission (FTC) has issued the attached Civil Investigative Demand asking for information as part of a non-public investigation. Our purpose is to determine whether Complete Merchant Solutions LLC, and its officers or managers in their individual capacity, have engaged in deceptive or unfair acts or practices by facilitating payment processing when they knew or should have known that charges were unauthorized or by assisting or facilitating violations of the Telemarketing Sales Rule, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and 16 C.F.R. Part 310 and whether Commission action to obtain redress for injury to consumers or others would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:

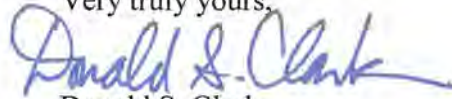
1. **Contact FTC counsel, Christine Todaro (202-326-3711; ctodaro@ftc.gov) or Laura Basford (202-326-2343; lbasford@ftc.gov), as soon as possible to schedule an initial meeting to be held within 14 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to how you comply with the Civil Investigative Demand that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents** that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.
3. **The FTC will use information you provide in response to the CID for purposes of investigating violations of the laws it enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official

law enforcement purposes. The FTC or other agencies may use and disclose your response in any federal, state, or foreign civil or criminal proceeding, or if required to do so by law. However, we will not publically disclose your information without giving you prior notice.

4. **Please read the attached documents closely.** They contain important information about how you should provide your response.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,



Donald S. Clark
Secretary of the Commission



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Complete Merchant Solutions, LLC
Attn: David M. Decker
815 W University Pkwy
Orem, UT 84058

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE

SEP 20 2017

3. SUBJECT OF INVESTIGATION

See attached Schedule and attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Lois C. Greisman / Diana Fabian
Federal Trade Commission
600 Pennsylvania Ave. NW, Mail Drop CC-8528
Washington, DC 20580

5. COMMISSION COUNSEL

Christine M. Todaro / Laura Baeferd
Federal Trade Commission
600 Pennsylvania Ave. NW, Mail Drop CC-8528
Washington, DC 20580
202-326-3711 (Todaro)
202-326-2343 (Baeferd)

DATE ISSUED

8/18/17

COMMISSIONER'S SIGNATURE

Thomas H. Decker

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://ftc.gov/ftcrulesofpractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents, information and tangible things required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein

If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to its submission and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**FEDERAL TRADE COMMISSION (“FTC”)
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE
FTC File No. 1723020**

Meet and Confer: You must contact FTC counsel, **Christine Todaro (202-326-3711; ctodaro@ftc.gov)** or **Laura Basford (202-326-2343; lbasford@ftc.gov)**, as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after you receive this CID. At the meeting, you must discuss with FTC counsel any questions you have regarding this CID or any possible CID modifications that could reduce your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information. You must make available at the meeting personnel knowledgeable about your information or records management systems, your systems for electronically stored information, custodians likely to have information responsive to this CID, and any other issues relevant to compliance with this CID.

Document Retention: You must retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional documents later during this investigation. **Accordingly, you must suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents** that are in any way relevant to this investigation, even if you believe those documents are protected from discovery. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

Sharing of Information: The FTC will use information you provide in response to the CID for purposes of investigating violations of the laws it enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publically disclose such information without giving you prior notice.

Manner of Production: You may produce documentary material or tangible things by making them available for inspection and copying at your principal place of business. Alternatively, you may send all responsive documents and tangible things to: **Diana Fabian, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Drop CC-8528, Washington, DC 20580**. If you are sending the materials, use a courier service such as Federal Express or UPS because heightened security measures delay postal delivery to the FTC. You must inform FTC counsel by email or telephone of how you intend to produce materials responsive to this CID at least five days before the return date.

Certification of Compliance: You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by completing the “Form of Certificate of Compliance” set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.

- a. all positions held within the Company; and
 - b. the job duties and the dates through which each position was held within the Company.
3. For each year of the Applicable Time Period for which the Company provided Payment Processing services for Merchant-clients on whose behalf the Company opened a Subject Account, provide the total gross revenues that the Company earned for providing Payment Processing services.
4. Describe all Payment Processing or transmission of payments other than credit or debit card transactions the Company provides, including but not limited to electronic checks, Remote Deposit Capture, Automated Clearinghouse (“ACH”) payments, Remotely Created Checks (“RCCs”), or Remotely Created Payment Orders (“RCPOs”).
5. Identify any categories of merchants, products, services, offers, or sales methods for which the Company will not provide Payment Processing services.
6. State whether the Company is registered or is required to register as a MasterCard High-Risk Payment Facilitator, Visa Third Party Agent, or under any similar program mandated by any payments card company or association.
7. Identify each Merchant-client that was the subject of any federal, state, or local government authority (law enforcement agencies, regulatory agencies, or other) inquiry to the Company since July 1, 2012; identify the governmental entity that made each inquiry, and describe the nature of each inquiry.
8. For each Merchant-client on whose behalf the Company opened a Subject Account, and for each Merchant-client identified in response to Interrogatory 7, provide:
 - a. the Identity of each officer, principal, director, principal stockholder, owner, manager, and known contact person of the Merchant-client;
 - b. each alternate or “DBA” (“Doing Business As”) name and product name used by the Merchant-client, including any predecessor companies or DBA names used by the Merchant-client or its predecessor companies;
 - c. the type of product or service sold or marketed by the Merchant-client, and the medium used by the Merchant-client to sell or market such product or service (e.g., outbound telemarketing, inbound telemarketing, direct mail, Internet, mobile device);
 - d. the dates the Company commenced and stopped providing Payment Processing services for the Merchant-client, stated separately for each transaction type processed (i.e., credit card-not-present, debit card-not-present, credit card-present, debit card-present, ACH, RCC, RCPO, etc.),

and the reason the Company stopped providing Payment processing services for the Merchant-client;

- e. the nature of any other type of service provided by the Company to the Merchant-client (e.g., referrals of business, sales of leads, customer services, product fulfillment services);
- f. how the Company came to know of and commence a business relationship with the Merchant-client, including the name, address, and telephone number of any person, ISO, or other third party who provided a reference or referral about the Merchant-client;
- g. the names, addresses, telephone numbers, and contact persons of each financial institution, ISO, payment processor, and third party service provider through which the Company provides or has provided Payment Processing services on behalf of the Merchant-client, and the dates the Payment Processing services through such entities commenced and ended;
- h. the name and number of each account or merchant ID that the Company opened on behalf of the Merchant-client;
- i. the total number and gross dollar amount of all transactions processed by the Company, including any transactions indirectly processed through another third party service provider;
- j. the total number, gross dollar amount, and percentage (of total transactions attempted) of all Declined Transactions, organized by Declined Transaction Reason Code;
- k. the total number, gross dollar amount, and percentage (of total transactions) of all Chargebacks, organized by Chargeback Reason Code;
- l. the total number, gross dollar amount, and percentage (of total transactions) of all Refunds;
- m. the total amount or level of reserve funds or other funds the Company withheld from the Merchant-client for any reason, including, but not limited to, in order to cover anticipated Refunds or Chargebacks;
- n. the gross and net revenues the Company earned for providing Payment Processing services;
- o. the gross and net revenues that the Company earned for Chargebacks associated with the Merchant-client; and
- p. the Identity of the payment gateway used to transmit consumers' payment information from the Merchant-client's payment portal to the Company, and state the Company's ownership interest in the payment gateway, if

any.

9. For each Subject Account, and for all accounts maintained by the Company for Merchant-clients identified in response to Interrogatory 7, provide:
 - a. the date the account was opened and, for any account that was closed, the date and reason the account was closed;
 - b. for each month and calendar year, the total number and dollar amount of all transactions the Company processed through the account, including any transactions indirectly processed through another third party service provider;
 - c. for each month and calendar year, the total number and dollar amount of Refunds, and the percentage of Refunds (compared against total transactions);
 - d. for each month and calendar year, the total number and dollar amount of Chargebacks, and percentage of Chargebacks (compared against total transactions);
 - e. for each month, the total number of Chargebacks organized by Chargeback Reason (include the Chargeback Reason Code);
 - f. the name, address, telephone number, and contact person of each financial institution, ISO, or other third party to or from which the Company transmitted, forwarded, or received funds or information about the Subject Account;
 - g. the Identity of each of the Company's current and former employee(s) responsible for opening and closing the account;
 - h. the current balance of the account;
 - i. the gross and net revenues that the Company earned for providing Payment Processing services for the Subject Account; and
 - j. the gross and net revenues that the Company earned for Chargebacks associated with the Subject Account.
10. State whether the Company has been or is currently under investigation by any federal, state, or local government authority (law enforcement agencies, regulatory agencies, or other), identify each governmental entity conducting such an investigation, and describe the nature of each investigation.
11. Describe the Company's relationship with First Data Corporation, including any role First Data Corporation plays or played in determining whether the Company will open, close, or maintain Subject Accounts, including any "high risk" Subject

Accounts.

12. Describe the Company's relationship with Global Payments Inc., including any role Global Payments Inc. plays or played in determining whether the Company will open, close, or maintain Subject Accounts, including any "high risk" Subject Accounts.
13. Provide the names of all entities that have acted as an Acquirer for the Company, and for each such Acquirer, the dates it acted as an Acquirer for the Company, and describe the Company's relationship with the Acquirer, including any role the Acquirer plays or played in determining whether the Company will open, close or maintain Merchant-client accounts, including any "high risk" Merchant-client accounts. For any entity that is no longer acting as an Acquirer for the Company, explain why the Acquirer is no longer acting in that capacity.
14. Identify any Documents that would be responsive to this CID, but that have been destroyed, mislaid, transferred, or are otherwise unavailable, and describe the circumstances and date on which they were destroyed, mislaid, transferred, or are otherwise unavailable.

B. Document Requests: Produce the following documents for each Subject Account:

1. All contracts and agreements between the Company and Commercial Bank of California (formerly National Bank of California), HSBC Bank, Global Payments, Inc., Visa, MasterCard, Discover, American Express, First Data Corporation, and any other payment processor, payment card network, or Acquirer;
2. For 2008, 2010, 2013, 2015, and 2017, the Company's policies, practices, procedures, categories, definitions, and systems regarding:
 - a. How the Company monitors and responds to Refunds and Chargebacks to Merchant-client accounts, including:
 - i. whether the Company monitors Refund and Chargeback rates;
 - ii. the procedures, if any, that the Company uses to monitor Refund and Chargeback rates, including the formulas that the Company uses to determine Refund and Chargeback rates;
 - iii. the maximum allowable Refund and Chargeback rates that a Merchant-client can have on any single account and/or in the aggregate before triggering an action or investigation by the Company;
 - iv. the actions, if any, that the Company takes if a Merchant-client exceeds the Company's maximum allowable Refund or Chargeback rates, including all corrective actions that the Company requires any such Merchant-client to take; and

- v. whether the Company establishes or adjusts a level of reserve funds required to cover anticipated Refunds or Chargebacks of Merchant-clients, including the Company's policies regarding the establishment of a reserve fund, and the circumstances that would warrant an increase to an established reserve fund for a Merchant-client.
 - b. How the Company determines whether to open, close, or maintain Merchant-client accounts, including any "high risk" Merchant-client accounts.
3. All Documents related to any MasterCard Service Provider Fraud Management Program or Visa Acquirer Risk Program ("ARP") review.
 4. All Schedules referenced in the Unit Purchase Agreement dated March 31, 2016, by and among Complete Merchant Solutions Holding Company, LLC as Rollover Buyer, CMS Acquisition Company, LLC as Cash Buyer, Decker Enterprises, LLC, Hallmark Business Solutions, LLC, T.D. Hansen, L.L.C., and Fidelity Investments Charitable Gift Fund as Sellers, David Decker, Kyle Hall, Trever Hansen, as Seller Owners and David Decker as Sellers' Representative.
 5. The agreement dated January 10, 2016, between the Company and Jack Wilson; the agreement dated November 2012, between the Company and Jack Wilson; the "Confidential Separation and Transition Agreement and Release," between Jack Wilson, the Company and the individuals named on the signature page thereto; and all Documents and communications related to Jack Wilson's employment at or affiliation with the Company.
 6. For each Merchant-client on whose behalf the Company opened a Subject Account, and each Merchant-client identified in response to Interrogatory 7:
 - a. All communications between the Company and the Merchant-client;
 - b. All communications, whether between persons within the Company or between the Company and any third party, relating to the Merchant-client, including:
 - i. Any complaints, subpoenas, civil investigative demands, information requests, or other inquiries, and all other communications between the Company and any federal, state or local government authorities; and
 - ii. All communications between the Company and any Acquirers, financial institutions, Better Business Bureaus, or other third parties;
 - c. All applications, contracts, agreements, memoranda of understanding, or other Documents between the Company and the Merchant-client,

including, but not limited to, all materials provided by the Merchant-client in connection with an application to the Company for the provision of Payment Processing services, such as, for example, any corporate Documents, business plan, description of goods or services marketed, marketing material (including product descriptions and Internet advertisements), sales or customer service scripts, past Return or Chargeback rates, estimated future Return or Chargeback rates, and wire transfer instructions; and

- d. All other Documents relating to the Merchant-client, including, but not limited to, all Documents relating to any MasterCard Excessive Chargeback Program or Visa Merchant Chargeback Monitoring Program review.

RFPA AND SARS NOTICE: This CID does not seek any financial records for which prior customer notice is required under the Right to Financial Privacy Act (“RFPA”), 12 U.S.C. §§ 3401, *et seq.* This CID only seeks information relating to accounts in the name of legal entities that are not individuals or partnerships of five or fewer individuals. This CID also does not seek any Suspicious Activity Reports (SARs). Do not produce any SARs or provide any financial records beyond those specifically requested in this CID. If you have any questions, please contact FTC counsel before providing responsive information.

DEFINITIONS

The following definitions apply to this CID:

D-1. “**Acquirer**” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

D-2. “**Cardholder**” means any consumer who uses a credit card, debit card, or prepaid debit card to purchase goods or services.

D-3. “**Chargeback**” means a transaction that a card issuer returns as a financial liability to an acquiring or merchant bank, usually because of a disputed transaction. The acquirer may then return or “charge back” the transaction to the merchant.

D-4. “**Chargeback Reason**” means the reason provided for the Chargeback.

D-5. “**Chargeback Reason Code**” means the code that identifies the reason provided for the Chargeback and that may accompany the Chargeback.

D-6. “**Company,**” “**You,**” or “**Your**” means **Complete Merchant Solutions, LLC**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents,

consultants, and other persons working for or on behalf of the foregoing, including David M. Decker, Jr. and Jack Wilson.

D-7. “**Document**” means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), and Federal Rule of Civil Procedure 34(a)(1)(A).

D-8. “**First Data Corporation**” shall mean First Data Corporation, its wholly or partially owned subsidiaries, including First Data Merchant Services Corporation, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

D-9. “**Global Payments Inc.**” shall mean Global Payments Inc., its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

D-10. “**Identify**” or “**the identity of**” requires identification of (a) natural persons by name, title, present business affiliation, present business address, telephone number, and email address or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, and the identities of your contact persons at the business or organization.

D-11. “**Independent Sales Organization**” or “**ISO**” shall mean any person, corporation, organization or other entity that solicits, matches, arranges, or refers Payment Processing services for Merchant-clients, or that solicits, matches, arranges or refers Merchant-clients for Payment Processing services.

D-12. “**Merchant-client**” shall mean any business (*i.e.*, legal entity) which is a corporation, limited liability company, partnership of more than five individuals, or other entity that is not a “person” for purposes of the Right to Financial Privacy Act (“RFPA”), 12 U.S.C. § 3401(4), for which You provide or have provided Payment Processing services.

D-13. “**Payment Processing**” means the performance of any function of collecting, formatting, charging, transmitting, or processing, whether directly or indirectly, payment for goods or services. Payment processing includes: providing a merchant, financial institution, person, or entity, directly or indirectly, with the access or means to charge or debit an account; monitoring, tracking, and reconciling payments, returns, Refunds, and Chargebacks; providing Refund services to a merchant; and disbursing funds and receipts to merchants.

D-14. “**Refund**” means a merchant’s credit or reversal of a charge the merchant previously processed to a Cardholder’s account. A merchant may provide a refund after a consumer has cancelled a transaction or returned the goods purchased. For purposes of this CID, the term “refund” includes any request for refunds or credits other than a Chargeback.

INSTRUCTIONS

I-1. **Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if you have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If you file a petition to limit or quash, you must still timely respond to all requests that you do not seek to modify or set aside in your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

I-2. **Withholding Requested Material / Privilege Claims:** If you withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, you must assert the claim no later than the return date of this CID, and you must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. If only some portion of any responsive material is privileged, you must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. **Modification of Specifications:** The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

I-4. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control, including documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, service providers, and other agents and consultants, whether or not such documents or information were received from or disseminated to any person or entity.

I-5. **Identification of Responsive Documents:** For specifications requesting production of documents, you must identify in writing the documents that are responsive to the specification. Documents that may be responsive to more than one specification of this CID need not be produced more than once. If any documents responsive to this CID have been previously supplied to the FTC, you may identify the documents previously provided and the date of submission.

I-6. **Maintain Document Order:** You must produce documents in the order in which they appear in your files or as electronically stored. If documents are removed from their original folders, binders, covers, containers, or electronic source, you must specify the folder, binder, cover, container, or electronic media or file paths from which such documents came.

I-7. Numbering of Documents: You must number all documents in your submission with a unique identifier such as a bates number or a document ID.

I-8. Production of Copies: Unless otherwise stated, you may submit copies in lieu of original documents if they are true, correct, and complete copies of the originals and you preserve and retain the originals in their same state as of the time you received this CID. Submission of copies constitutes a waiver of any claim as to the authenticity of the copies should the FTC introduce such copies as evidence in any legal proceeding.

I-9. Production in Color: You must produce copies of advertisements in color, and you must produce copies of other materials in color if necessary to interpret them or render them intelligible.

I-10. Electronically Stored Information: See the attached FTC Bureau of Consumer Protection Production Requirements (“Production Requirements”), which detail all requirements for the production of electronically stored information to the FTC. You must discuss issues relating to the production of electronically stored information with FTC staff **prior to** production.

I-11. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”): If any materials responsive to this CID contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps you can take to minimize the amount of Sensitive PII or SHI you produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data (such as fingerprints or retina scans, but not photographs); and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I-12. Interrogatory Responses: For specifications requesting answers to written interrogatories, answer each interrogatory and each interrogatory subpart separately and fully, in writing, and under oath.

I-13. Submission of Documents in Lieu of Interrogatory Answers: You may answer any written interrogatory by submitting previously existing documents that contain the information requested in the interrogatory so long as you clearly indicate in each written interrogatory response which documents contain the responsive information. For any interrogatory that asks you to identify documents, you may, at your option, produce the documents responsive to the interrogatory so long as you clearly indicate the specific interrogatory to which such documents are responsive.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF UNAUTHORIZED CHARGES TO CONSUMERS' ACCOUNTS**

File No. 082-3247

Nature and Scope of Investigation:


To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers' accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods and services, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* The investigation is also to determine whether Commission action to obtain monetary relief, including consumer redress, disgorgement, or civil penalties, would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto, Section 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and Regulation E, 12 C.F.R. § 205.1 *et seq.*, and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: September 20, 2013

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Complete Merchant Solutions, LLC (the "Company") and attached hereto.
3. The documents produced and attached hereto by the Company are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of the Company; and
 - c) Were made by the regularly conducted activity as a regular practice of the Company.

I certify under penalty of perjury that the foregoing is true and correct.

Date: _____

Signature

Petition Exhibit 3

Letter from Laura Basford to Complete Merchant Solutions, LLC

(August 14, 2019)



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Laura C. Basford
Attorney
Division of Marketing Practices
Bureau of Consumer Protection

August 14, 2019

VIA EMAIL

Timothy J. Muris, Esq.
Andrew J. Strenio Jr., Esq.
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005

Re: Civil Investigative Demand (“CID”) Issued to Complete Merchant Solutions, LLC (“CMS”) on August 18, 2017 by the Federal Trade Commission; File No. 1723020

Dear Counsel:

We recently learned that CMS received a law enforcement inquiry from the Utah Attorney General regarding a merchant account, or accounts, used by defendants in the *Utah Div. of Consumer Protection v. Troy Stevens, et al.* action. No. 19-cv-00441 (D. Utah June 24, 2019). The CID to CMS requires CMS to provide responses to interrogatories and produce documents relating to Merchant-clients who are the subject of any law enforcement inquiry to CMS. We therefore ask that CMS supplement its response to the CID by providing sworn interrogatory responses and producing responsive documents, including emails, relating to the Merchant-clients that are defendants in the *Troy Stevens* action. This would include providing documents and interrogatory responses for the merchant account with the MID 51348500000190.

Should you have any questions about this, please contact me at (202) 326-2343, or Christine Todaro at (202) 326-3711.

Sincerely,

A handwritten signature in blue ink that reads "Laura C. Basford".

Laura C. Basford

cc: Benjamin Mundel, Esq.
Tina Papagiannopoulos, Esq.
Tami Weerasingha-Cote, Esq.

Petition Exhibit 4

Letter from Laura Basford to Complete Merchant Solutions, LLC

(October 10, 2019)



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Laura Basford
Attorney
Division of Marketing Practices
Bureau of Consumer Protection

October 10, 2019

VIA EMAIL

Mark C. Holscher, Esq.
Kirkland & Ellis LLP
333 South Hope St.
29th Floor
Los Angeles, CA 90071

Timothy J. Muris, Esq.
Andrew J. Strenio Jr., Esq.
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005

RE: Civil Investigative Demand (“CID”) Issued to Complete Merchant Solutions, LLC (“CMS”) on August 18, 2017 by the Federal Trade Commission; File No. 1723020

Dear Counsel:

CMS received a law enforcement inquiry from the Utah Attorney General regarding merchant accounts used by defendants in the *Utah Div. of Consumer Protection v. Troy Stevens, et al.* action, which was later dismissed on jurisdictional grounds and filed in state court. *See Utah Div. of Consumer Protection v. Troy Stevens, et al.*, No. 190907053 (3d Jud. Dist. Ct., Salt Lake County, Sept. 10, 2019). The CID to CMS requires CMS to provide responses to interrogatories and produce documents relating to Merchant-clients who are the subject of any law enforcement inquiry to CMS. Accordingly, we have now asked that CMS supplement its response to the CID three times—first, on August 14, and again on September 5 and September 23. On September 9, you wrote that CMS was “reviewing” this request and “evaluating” its response.

The language of the CID is clear and requires CMS to produce responsive documents and provide interrogatory responses relating to the Merchant-clients that are defendants in the *Troy Stevens* action. It has been nearly two months since we first asked that CMS produce the required documents and information. Please advise when CMS will meet its obligations.

Sincerely,

A handwritten signature in blue ink that reads "Laura Basford".

Laura Basford

Petition Exhibit 5

Letter from Laura Basford to Complete Merchant Solutions, LLC

(October 21, 2019)



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Laura Basford
Attorney
Division of Marketing Practices
Bureau of Consumer Protection

October 21, 2019

VIA EMAIL

Mark C. Holscher, Esq.
Kirkland & Ellis LLP
333 South Hope St.
29th Floor
Los Angeles, CA 90071

Timothy J. Muris, Esq.
Andrew J. Strenio Jr., Esq.
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005

RE: Civil Investigative Demand (“CID”) Issued to Complete Merchant Solutions, LLC (“CMS”) on August 18, 2017 by the Federal Trade Commission (“FTC”); File No. 1723020

Dear Counsel:

We understand that CMS has received civil investigative demands from the Federal Trade Commission in the following matters:

- (1) Matter No. [REDACTED], dated August 22, 2019, which seeks information and documents relating to [REDACTED] and affiliated individuals and companies; and
- (2) Matter No. [REDACTED], dated August 26, 2019, which seeks information and documents relating to [REDACTED] and affiliated individuals and companies.

CMS has also received document requests in the following action: *FTC and Utah Div. of Consumer Protection v. Zurixx, LLC et al.*, No. 19-cv-00713 (D. Utah September 30, 2019).

As you know, the CID to CMS requires CMS to provide responses to interrogatories and produce documents relating to Merchant-clients who are the subject of any law enforcement inquiry to CMS. We therefore ask that CMS supplement its response to the CID by providing sworn interrogatory responses and producing responsive documents, including emails, relating to the Merchant-clients that are named in the above-mentioned August 2019 CIDs and the *Zurixx* action.

Please advise when CMS will supplement its CID production relating to these three additional law enforcement inquiries, and note that these requests are in addition to CMS's outstanding obligation to produce documents related to the *Utah Div. of Consumer Protection v. Troy Stevens, et al.* action. No. 19-cv-00441 (D. Utah June 24, 2019).

Sincerely,

A handwritten signature in blue ink that reads "Laura Basford". The signature is written in a cursive style.

Laura Basford

Petition Exhibit 6

Letter from Mark Holscher to Laura Basford

(October 25, 2019)

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Mark C. Holscher
To Call Writer Directly:
+1 213 680 8190
mark.holscher@kirkland.com

333 South Hope Street
Los Angeles, CA 90071
United States

+1 213 680 8400

www.kirkland.com

Facsimile:
+1 213 680 8500

October 25, 2019

Via Email

CONFIDENTIAL

Laura Basford, Attorney
Division of Marketing Practices
Bureau of Consumer Protection
FEDERAL TRADE COMMISSION
Washington, DC 20580

Re: Civil Investigative Demand (“CID”) Issued to Complete Merchant Solutions, LLC (“CMS”) on August 18, 2017 by the Federal Trade Commission (“FTC”); File No. 1723020

Dear Ms. Basford:

I write in response to your letters dated October 10, 2019 and October 21, 2019, which request that Complete Merchant Solutions (“CMS”) supplement its responses to the interrogatories and document requests in the Civil Investigative Demand issued to CMS on August 18, 2017 (“CID”). CMS has and will continue to cooperate with the Staff’s investigation in good faith, having already fully complied with the CID in 2018. CMS has produced over 475,000 pages of documents, detailed interrogatory responses, and produced three different former/current employees for testimony. CMS has also produced to your colleagues information requested by the FTC in response to the CIDs issued in connection with Matters ██████████ and ██████████ and the TRO in the Zurixx matter and has agreed to produce some additional information on a rolling basis.

During our meeting in September, you made clear, however, that these two new CIDs were issued solely to facilitate investigations of other targets/entities, and not to supplement your investigation as to CMS. The FTC Staff handling those separate matters made similar representations during meet and confers with my colleagues, and CMS relied on those representations in agreeing to produce certain information responsive to the CIDs. Given those representations, we are surprised to receive a letter demanding that CMS produce the very same information to you pursuant to the CID issued to CMS. That position directly conflicts with the representations made to us in our meeting.

While our client is and will continue to be cooperative with the FTC’s various investigations of other entities ██████████ Not relevant ██████████

KIRKLAND & ELLIS LLP

Laura Basford
October 25, 2019
Page 2

Not relevant, we are not aware of any authority requiring the type of open-ended and ongoing obligation to supplement a production already done in response to a CID. If you have such authority, please share that so we can reconsider our position.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Holscher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark C. Holscher

Petition Exhibit 7

Civil Investigative Demand to Complete Merchant Solutions, LLC

(November 5, 2019)



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

CONFIDENTIAL

Via Federal Express

Complete Merchant Solutions, LLC

Attn: David M. Decker, Jr., Bryant Blanchard, and/or Laura Minnick

1550 E 3rd Floor

Orem, UT 84097

FTC Matter No. 1723020

To Whom It May Concern:

The Federal Trade Commission (FTC) has issued the attached Civil Investigative Demand asking for information as part of a non-public investigation. Our purpose is to determine whether Complete Merchant Solutions, LLC, as defined in the enclosed CID schedule, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, and its current and former officers and managers in their individual capacity, have engaged in deceptive or unfair acts or practices by providing payment processing services to merchants while they knew or should have known that charges to consumers' accounts were either unauthorized or otherwise obtained illegally, or by assisting or facilitating violations of the Telemarketing Sales Rule, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and 16 C.F.R. Part 310, and whether Commission action to obtain monetary relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:

1. **If you have any questions, contact FTC counsel Christine M. Todaro (202-326-3711; ctodaro@ftc.gov) Laura Basford (202-326-2343; lbasford@ftc.gov) or Ben Davidson (202-326-3055; b davidson@ftc.gov) as soon as possible to schedule an initial meeting to be held within 14 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to the CID that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **Please keep this request, and the FTC's investigation, confidential.** The attached Civil Investigative Demand is part of an ongoing, nonpublic investigation. Disclosing it could interfere with our law-enforcement efforts. If you choose to take any action that could alert the target(s) to the investigation (such as suspending services), please contact FTC counsel before taking any such action.

3. **You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.**
4. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose your response in any federal, state, or foreign civil or criminal proceeding, or if required to do so by law. However, we will not publicly disclose your information without giving you prior notice.**
5. **Please read the attached documents closely. They contain important information about how you should provide your response.**

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,

A handwritten signature in blue ink that reads "April J. Tabor /sc".

April J. Tabor
Acting Secretary of the Commission



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO Complete Merchant Solutions, LLC Attn: David M. Decker, Jr., Bryant Blanchard, and/or Laura Minnick 1550 E 3rd Floor Orem, UT 84097	1a. MATTER NUMBER 1723020
---	----------------------------------

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
DATE AND TIME OF HEARING OR DEPOSITION	

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE

NOV 19 2019 *by 5:00 pm*

3. SUBJECT OF INVESTIGATION
See attached Schedule and attached resolutions.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN Lois C. Greisman / Diana Shiller Federal Trade Commission 600 Pennsylvania Ave. NW, Mail Drop CC-8528 Washington, DC 20580	5. COMMISSION COUNSEL Christine M. Todaro / Laura Bayliff/ Benjamin Davidson Federal Trade Commission 600 Pennsylvania Ave. NW, Mail Drop CC-8528 Washington, DC 20580 202-326-3711 (Todaro) 202-326-3343 (Bayliff) 202-326-3055 (Davidson)
--	--

DATE ISSUED <i>11/5/19</i>	COMMISSIONER'S SIGNATURE <i>Robert Oberman</i>
-------------------------------	---

INSTRUCTIONS AND NOTICES
The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH
The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS
The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES
Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://ftc.gov/ftcpr>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents, information and tangible things required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to its submission and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

FEDERAL TRADE COMMISSION ("FTC")
CIVIL INVESTIGATIVE DEMAND ("CID") SCHEDULE
FTC File No. 1723020

Confidentiality: This CID relates to a nonpublic FTC law enforcement investigation. If You choose to take any action that may alert any of Your customers or subscribers of the FTC's inquiry (such as termination or suspension of services), please contact FTC counsel before taking such action. Premature disclosure of this CID could impede the FTC's investigation and interfere with its enforcement of the law.

Meet and Confer: You must contact Christine M. Todaro at 202-326-3711 or ctodaro@ftc.gov; Laura Basford at 202-326-2343 or lbasford@ftc.gov; or Benjamin Davidson at 202-326-3055 or bdavidson@ftc.gov, as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after You receive this CID. At the meeting, You must discuss with FTC counsel any questions You have regarding this CID or any possible CID modifications that could reduce Your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information. You must make available at the meeting personnel knowledgeable about Your information or records management systems, Your systems for electronically stored information, custodians likely to have information responsive to this CID, and any other issues relevant to compliance with this CID.

Document Retention: You must retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional Documents later during this investigation. Accordingly, You must suspend any routine procedures for Document destruction and take other measures to prevent the destruction of Documents in Your possession, custody, or control that are in any way relevant to this investigation, even if those Documents are being retained by a third-party or You believe those Documents are protected from discovery. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519

Sharing of Information: The FTC will use information You provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission's Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide Your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving You prior notice.

Manner of Production: You may produce documentary material or tangible things by making them available for inspection and copying at Your principal place of business. Alternatively, You may send all responsive Documents and tangible things to Diana Shiller, Federal Trade Commission, 600 Pennsylvania Ave. NW, Mail-Stop CC-8528, Washington DC 20580. If You are sending the materials, use a courier service such as Federal Express or UPS because heightened security measures delay postal delivery to the FTC. You must inform FTC counsel

by email or telephone of how You intend to produce materials responsive to this CID at least five days before the return date.

Certification of Compliance: You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by signing the "Certification of Compliance" attached to this CID.

Certification of Records of Regularly Conducted Activity: Attached is a Certification of Records of Regularly Conducted Activity. Please execute and return this Certification with Your response. Completing this certification may reduce the need to subpoena You to testify at future proceedings to establish the admissibility of Documents produced in response to this CID.

Definitions and Instructions: Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

I. SUBJECT OF INVESTIGATION

Whether the Company, as defined herein, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, and its current and former officers and managers in their individual capacity, have engaged in deceptive or unfair acts or practices by providing payment processing services to merchants while they knew or should have known that charges to consumers' accounts were either unauthorized or otherwise obtained illegally, or by assisting or facilitating violations of the Telemarketing Sales Rule, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and 16 C.F.R. Part 310, and whether Commission action to obtain monetary relief would be in the public interest. See also attached resolutions.

II. SPECIFICATIONS

Applicable Time Period: Unless otherwise directed, the applicable time period for the requests set forth below is from **November 1, 2016 until the date of full and complete compliance with this CID.**

"Subject Account" means any merchant account or account used for Payment Processing maintained by the Company in the name of corporations, limited liability companies, partnerships of more than five individuals, or other entities that are not a "person" for purposes of the Right to Financial Privacy Act, 12 U.S.C. §§ 3401 *et seq.*, that meets one or more of the following conditions:

1. Is or was in the name of any of the following entities:
 - A. Zurixx, LLC
 - B. Carlson Development Group, LLC
 - C. CJ Seminar Holdings, LLC

- D. Zurixx Financial, LLC
- E. [REDACTED]
- F. [REDACTED]
- G. [REDACTED]
- H. Prosperity International LLC, formerly dba Flip and Build Wealth and Real Estate Workshop
- I. PLI LLC, formerly dba Prosperity Learning LLC
- J. Opus Management Group, LLC
- K. Mantis Management, Inc.
- L. Selective Marketing Company
- M. Bo-Roc Management Inc.
- N. Nudge, LLC
- O. Response Marketing Group, LLC also dba 3 Day Real Estate Training, Abundance Edu, LLC, Affluence Edu, LLC, American Money Tour, Cash Flow Edu, Clark Edu, LLC, Edge 2 Real Estate, EVTech Media North, Flip for Life, Flipping for Life, Income Events, Insider's Financial Education, LLC, Leading Financial Education, LLC, OnWealth, Power Flip, Prosper Live Property Education, LLC, Renovate to Rent, Simple Real Estate Training, Smart Flip, Snap Flip, US Education Advance, Vintage Flip, Visionary Events, Wealth Tribe, Women's Empowerment, Yancey Events, Yancey, LLC, Your Real Estate Today
- P. BUYPD, LLC
- Q. [REDACTED]
- R. [REDACTED]
- S. [REDACTED]
- T. [REDACTED]
- U. [REDACTED]

V. [REDACTED]

2. Any of the following individuals or entities are or were signatories, or have or had other authority that is comparable to signatory authority:

A. Christopher A. Cannon

B. James M. Carlson

C. Jeffrey D. Spangler

D. [REDACTED]

E. [REDACTED]

F. [REDACTED]

G. [REDACTED]

H. [REDACTED]

I. [REDACTED]

J. [REDACTED]

K. [REDACTED]

L. Troy Stevens

M. Cory Wadsworth

N. MJ Augie Bove

O. Brandon B. Lewis

P. Ryan C Poelman

Q. Phillip W. Smith

R. Shawn L. Finnegan

S. Clint R. Sanderson

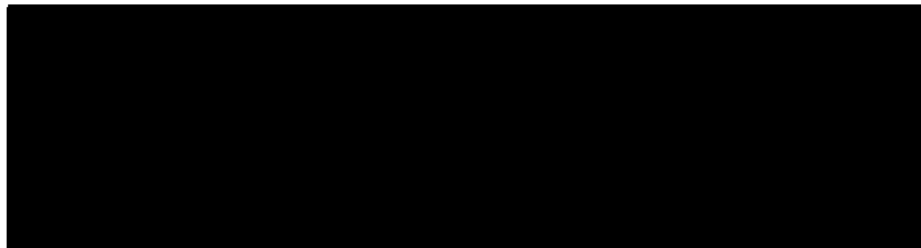
T. [REDACTED]

U. [REDACTED]

V.

W.

X.



3. Has been assigned any of the following account numbers:

- A. 51348500000190
- B. 513485000005157
- C. 8788117000236
- D. 8788117000210
- E. 513485000000257
- F. 513485000310102
- G. 513485000341198
- H. 513485000000216
- I. 513485000002477
- J. 513485000006627
- K. 513485000007112
- L. 513485000007187
- M. 513485000007195
- N. 513485000008185
- O. 513485000105056
- P. 513485000108894
- Q. 513485000108902
- R. 513485000108910
- S. 513485000108969
- T. 513485000006114
- U. 513485000206615

V. 513485000303404
W. 513485000303438
X. 513485000303453
Y. 513485000303461
Z. 513485000303487
AA. 513485000303503
BB. 513485000303529
CC. 513485000303545
DD. 513485000304121
EE. 513485000309591
FF. 513485000310342
GG. 513485000314237
HH. 513485000329144
II. 513485000329169
JJ. 513485000329185
KK. 513485000329201
LL. 513485000335141
MM. 513485000340984
NN. [REDACTED]
OO. [REDACTED]
PP. [REDACTED]
QQ. [REDACTED]
RR. [REDACTED]
SS. [REDACTED]

A. Document Requests:

1. For each Merchant-client on whose behalf the Company opened a Subject Account, and for each Merchant-client identified in response to Interrogatory 1, produce:
 - a. All communications between the Company and the Merchant-client even if such communications were created prior to the Applicable Time Period.;
 - b. All communications, whether between persons within the Company or between the Company and any third party, relating to the Merchant-client, even if such communications were created prior to the Applicable Time Period, including:
 - i. Any complaints, subpoenas, civil investigative demands, information requests, or other inquiries, and all other Communications between the Company and any federal, state or local government authorities; and
 - ii. All communications between the Company and any Acquirers, financial institutions, Better Business Bureaus, or other third parties;
 - c. All applications, contracts, agreements, memoranda of understanding, or other Documents between the Company and the Merchant-client, including, but not limited to, all materials provided by the Merchant-client in connection with an application to the Company for the provision of Payment Processing services, such as, for example, any corporate Documents, business plan, description of goods or services marketed, marketing material (including product descriptions and Internet advertisements), sales or customer service scripts, past Return or Chargeback rates, estimated future Return or Chargeback rates, and wire transfer instructions; and
 - d. All other Documents relating to the Merchant-client, including, but not limited to, all Documents relating to any MasterCard Excessive Chargeback Program or Visa Merchant Chargeback Monitoring Program review.

B. Interrogatories:

1. Identify each Merchant-client that was the subject of any federal, state, or local government authority (law enforcement agencies, regulatory agencies, or other) inquiry to the Company since November 1, 2019 until the date of full and complete compliance with this CID and completion of the attached Certificate of Compliance.
2. For each Merchant-client on whose behalf the Company opened a Subject Account, and for each Merchant-client identified in response to Interrogatory 1, provide:

- a. The Identity of each officer, principal, director, principal stockholder, owner, manager, and known contact person of the Merchant-client;
- b. Each alternate or "DBA" ("Doing Business As") name and product name used by the Merchant-client, including any predecessor companies or DBA names used by the Merchant-client or its predecessor companies;
- c. The type of product or service sold or marketed by the Merchant-client, and the medium used by the Merchant-client to sell or market such product or service (e.g., outbound telemarketing, inbound telemarketing, direct mail, Internet, mobile device);
- d. The dates the Company commenced and stopped providing Payment Processing services for the Merchant-client, stated separately for each transaction type processed (i.e., credit card-not-present, debit card-not-present, credit card-present, debit card-present, ACH, RCC, RCPO, etc.), and the reason the Company stopped providing Payment processing services for the Merchant-client;
- e. The nature of any other type of service provided by the Company to the Merchant-client (e.g., referrals of business, sales of leads, customer services, product fulfillment services);
- f. How the Company came to know of and commence a business relationship with the Merchant-client, including the name, address, and telephone number of any person, ISO, or other third party who provided a reference or referral about the Merchant-client;
- g. The names, addresses, telephone numbers, and contact persons of each financial institution, ISO, payment processor, and third party service provider through which the Company provides or has provided Payment Processing services on behalf of the Merchant-client, and the dates the Payment Processing services through such entities commenced and ended;
- h. The name and number of each account or merchant ID that the Company opened on behalf of the Merchant-client;
- i. The total number and gross dollar amount of all transactions processed by the Company, including any transactions indirectly processed through another third party service provider;
- j. The total number, gross dollar amount, and percentage (of total transactions attempted) of all Declined Transactions organized by Declined Transaction Reason Code;
- k. The total number, gross dollar amount, and percentage (of total transactions) of all Chargebacks, organized by Chargeback Reason Code;

- i. The total number, gross dollar amount, and percentage (of total transactions) of all Refunds;
 - m. The total amount or level of reserve funds or other funds the Company withheld from the Merchant-client for any reason, including, but not limited to, in order to cover anticipated Refunds or Chargebacks;
 - ii. The gross and net revenues the Company earned for providing Payment Processing services;
 - o. The gross and net revenues that the Company earned for Chargebacks associated with the Merchant-client; and
 - p. The Identity of the Payment Gateway used to transmit consumers' payment information from the Merchant-client's payment portal to the Company, and state the Company's ownership interest in the Payment Gateway, if any.
3. For each Subject Account, and for each Merchant-client Identified in response to Interrogatory 1, provide:
- a. The date the account was opened and, for any account that was closed, the date and reason the account was closed;
 - b. For each month and calendar year, the total number and dollar amount of all transactions the Company processed through the account including any transactions indirectly processed through another third party service provider;
 - c. For each month and calendar year, the total number and dollar amount of Refunds, and the percentage of Refunds (compared against total transactions);
 - d. For each month and calendar year, the total number and dollar amount of Chargebacks, and percentage of Chargebacks (compared against total transactions);
 - e. For each month, the total number of Chargebacks organized by Chargeback Reason (include the Chargeback Reason Code);
 - f. The name, address, telephone number, and contact person of each financial institution, ISO, or other third party to or from which the Company transmitted, forwarded, or received funds or information about the Subject Account;
 - g. The Identity of each of the Company's current and former employee(s) responsible for opening and closing the account,

- h. The current balance of the account;
- i. The gross and net revenues that the Company earned for providing Payment Processing services for the Subject Account; and
- j. The gross and net revenues that the Company earned for Chargebacks associated with the Subject Account

RFPA AND SARS NOTICE: This CID does not seek any financial records for which prior customer notice is required under the Right to Financial Privacy Act (“RFPA”), 12 U.S.C. §§ 3401, *et seq.* This CID only seeks information relating to accounts in the name of legal entities that are not individuals or partnerships of five or fewer individuals. This CID also does not seek any Suspicious Activity Reports (SARs). Do not produce any SARs or provide any financial records beyond those specifically requested in this CID. If You have any questions, please contact FTC counsel before providing responsive information.

III. DEFINITIONS

The following definitions apply to this CID:

D-1. “**Acquirer**” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

D-2. “**Cardholder**” means any consumer who uses a credit card, debit card, or prepaid debit card to purchase goods or services.

D-3. “**Chargeback**” means a transaction that a card issuer returns as a financial liability to an acquiring or merchant bank, usually because of a disputed transaction. The acquirer may then return or “charge back” the transaction to the merchant.

D-4. “**Chargeback Reason**” means the reason provided for the Chargeback.

D-5. “**Chargeback Reason Code**” means the code that identifies the reason provided for the Chargeback and that may accompany the Chargeback.

D-6. “**Company,**” “**You,**” or “**Your**” means **Complete Merchant Solutions, LLC**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

D-7. “**Document**” means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of

any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), or Federal Rule of Civil Procedure 34(a)(1)(A).

D-8. “**Identify**” or “**the Identity of**” requires identification of (a) natural persons by name, title, present business affiliation, present business address, telephone number, and email address or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, and the identities of Your contact persons at the business or organization.

D-9. “**Independent Sales Organization**” or “**ISO**” means any person or entity that markets Payment Processing services, refers merchants for Payment Processing services, or otherwise assists merchants in obtaining Payment Processing services.

D-10. “**Merchant-client**” shall mean any business (*i.e.*, legal entity) which is a corporation, limited liability company, partnership of more than five individuals, or other entity that is not a “person” for purposes of the Right to Financial Privacy Act (“RFPA”), 12 U.S.C. § 3401(4), for which You provide or have provided Payment Processing services.

D-11. “**Payment Processing**” means the performance of any function of collecting, formatting, charging, transmitting, or processing, whether directly or indirectly, a Cardholder’s payment for goods or services. Payment Processing includes: providing a merchant, financial institution, person, or entity, directly or indirectly, with the access or means to charge or debit a Cardholder’s account; monitoring, tracking, and reconciling payments, returns, Refunds, and Chargebacks; providing Refund services to a merchant; and disbursing funds and receipts to merchants.

D-12. “**Refund**” means a merchant’s credit or reversal of a charge the merchant previously processed to a Cardholder’s account. A merchant may provide a Refund after a consumer has cancelled a transaction or returned the goods purchased. For purposes of this CID, the term “Refund” includes any request for Refunds or credits other than a Chargeback.

IV. INSTRUCTIONS

1-1 **Petitions to Limit or Quash.** You must file any petition to limit or quash this CID with the Secretary of the FTC prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if You have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If You file a petition to limit or quash, You must still timely respond to all requests that You do not seek to modify or set aside in Your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

1-2. **Withholding Requested Material / Privilege Claims:** For specifications requesting production of Documents or answers to written interrogatories, if You withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, You must assert the claim no later than the return date of this CID, and You must submit a detailed log, in a searchable electronic format, of the items

withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each Document, including attachments, without disclosing the protected information. If only some portion of any responsive material is privileged, You must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. Modification of Specifications. The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

I-4. Scope of Search: This CID covers Documents and information in Your possession or under Your actual or constructive custody or control, including Documents and information in the possession, custody, or control of Your attorneys, accountants, directors, officers, employees, service providers, and other agents and consultants, whether or not such Documents or information were received from or disseminated to any person or entity.

I-5. Identification of Responsive Documents: For specifications requesting production of Documents, You must identify in writing the Documents that are responsive to the specification. Documents that may be responsive to more than one specification of this CID need not be produced more than once. If any Documents responsive to this CID have been previously supplied to the FTC, You may identify the Documents previously provided and the date of submission.

I-6. Maintain Document Order: For specifications requesting production of Documents, You must produce Documents in the order in which they appear in Your files or as electronically stored. If Documents are removed from their original folders, binders, covers, containers, or electronic source, You must specify the folder, binder, cover, container, or electronic media or file paths from which such Documents came.

I-7. Numbering of Documents: For specifications requesting production of Documents, You must number all Documents in Your submission with a unique identifier such as a Bates number or a Document ID.

I-8. Production of Copies: For specifications requesting production of Documents, unless otherwise stated, You may submit copies in lieu of original Documents if they are true, correct, and complete copies of the originals and You preserve and retain the originals in their same state as of the time You received this CID. Submission of copies constitutes a waiver of any claim as to the authenticity of the copies should the FTC introduce such copies as evidence in any legal proceeding.

I-9. Production in Color: For specifications requesting production of Documents, You must produce copies of Advertisements in color, and You must produce copies of other materials in color if necessary to interpret them or render them intelligible.

[-10. Electronically Stored Information: For specifications requesting production of Documents, see the attached FTC Bureau of Consumer Protection Production Requirements ("Production Requirements"), which detail all requirements for the production of electronically stored information to the FTC. You must discuss issues relating to the production of electronically stored information with FTC staff prior to production.

[-11. Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI"): For specifications requesting production of Documents or answers to written interrogatories, if any responsive materials contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps You can take to minimize the amount of Sensitive PII or SHI You produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual's Social Security number; an individual's biometric data (such as fingerprints or retina scans, but not photographs); and an individual's name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

[-12. Interrogatory Responses: For specifications requesting answers to written interrogatories: (a) answer each interrogatory and each interrogatory subpart separately, fully, and in writing; and (b) verify that Your answers are true and correct to Your knowledge by signing the "Certification of Compliance" attached to this CID.

Federal Trade Commission - Bureau of Consumer Protection
Production Requirements
Revised August 2019

In producing information to the FTC, comply with the following requirements, unless the FTC agrees otherwise. If you have questions about these requirements, please contact FTC counsel before production.

Production Format

1. **General Format:** Provide load-ready electronic productions with:
 - a. A delimited data load file (.DAT) containing a line for every document, unique id number for every document (DocID), metadata fields, and native file links where applicable;
 - b. A document level text file, named for the DocID, containing the text of each produced document; and
 - c. An Opticon image load file (.OPT) containing a line for every image file, where applicable.
2. **Electronically Stored Information (ESI):** Documents stored in electronic format in the ordinary course of business must be produced in the following format:
 - a. For ESI other than the categories below, submit in native format. Include document level extracted text or Optical Character Recognition (OCR), all metadata, and corresponding image renderings converted to Group IV, 300 DPI, single-page TIFF (or color JPEG images when necessary to interpret the contents or render them intelligible).
 - b. For Microsoft Excel, Access, or PowerPoint files, submit in native format with extracted text and metadata. Data compilations in Excel spreadsheets or delimited text formats must contain all underlying data, formulas, and algorithms without redaction.
 - c. For other spreadsheet, database, presentation, or multimedia formats; instant messages; or proprietary applications, discuss the production format with FTC counsel.
3. **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business must be scanned and submitted as 300 DPI single page TIFFs (or color JPEGs when necessary to interpret the contents or render them intelligible), with corresponding document-level OCR text and logical document determination in an accompanying load file.
4. **Document Identification:** Provide a unique DocID for each hard copy or electronic document, consisting of a prefix and a consistent number of numerals using leading zeros. Do not use a space to separate the prefix from numbers.
5. **Attachments:** Preserve the parent/child relationship by producing attachments as separate documents, numbering them consecutively to the parent email, and including a reference to all attachments.

6. **Metadata Production:** For each document submitted electronically, include the standard metadata fields listed below in a standard delimited data load file. The first line of the data load file shall include the field names Submit date and time data in separate fields. Use these standard Concordance delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	¶	20
Quote Character	”	254
Multi Entry delimiter	@	174
<Return> Value in data	~	126

7. **De-duplication:** Do not use de-duplication or email threading software without FTC approval
8. **Password-Protected Files:** Remove passwords prior to production. If password removal is not possible provide the original and production filenames and the passwords, under separate cover.

Producing Data to the FTC

1. Prior to production, scan all data and media for viruses and confirm they are virus-free.
2. For productions smaller than 50 GB, submit data electronically using the FTC’s secure file transfer protocol. Contact FTC counsel for instructions. **The FTC cannot accept files via Dropbox, Google Drive, OneDrive, or other third-party file transfer sites.**
3. If you submit data using physical media:
 - a. Use only CDs, DVDs, flash drives, or hard drives. Format the media for use with Windows 7;
 - b. Use data encryption to protect any Sensitive Personally Identifiable Information or Sensitive Health Information (as defined in the instructions), and provide passwords in advance of delivery, under separate cover, and
 - c. Use a courier service (e.g., Federal Express, UPS) because heightened security measures delay postal delivery
4. Provide a transmittal letter with each production that includes:
 - a. Production volume name (e.g., Volume 1) and date of production;
 - b. Numeric DocID range of all documents in the production, and any gaps in the DocID range; and
 - c. List of custodians and the DocID range for each custodian.

Standard Metadata Fields

DAT FILE FIELDS	DEFINITIONS	POPULATE FIELD FOR:
DocID	Unique ID number for each document	All Documents
FamilyID	Unique ID for all documents in a family including parent and all child documents	All Documents
ParentID	Document ID of the parent document. This field will only be populated on child items	All Documents
FilePath	Path to produced native file	All Documents
TextPath	Path to document level text or OCR file	All Documents
Custodian	Name of the record owner/holder	All Documents
AllCustodians	Names of all custodians that had copy of this record (populate if data was deduplicated or email threading was used)	All Documents
Source	Source of documents: CID, Subpoena, Third Party Data, etc.	All Documents
Filename	Original file name	All Documents
File Size	Size of documents	All Documents
File Extensions	Extension of file type	All Documents
MDS Hash	Unique identifier for electronic data used in de-duplication	All Documents
PRODUCTION_VOLUME	Production Volume	All Documents
HASREDACTIONS	Redacted document	All Documents
Exception Reason	Reason for exception encountered during processing (e.g. empty file, source file, password-protected file, virus)	All Documents
PRODBEG	Beginning production bates number	Documents with Produced Images
PROEND	Ending production bates number	Documents with Produced Images
PRODBEG_ATTACH	Beginning production family bates number	Documents with Produced Images
PROEND_ATTACH	Ending production family bates number	Documents with Produced Images
Page Count	The number of pages the document contains	Documents with Produced Images
From	Names retrieved from the FROM field in a message	Emails
To	Names retrieved from the TO field in a message; the recipient(s)	Emails
CC	Names retrieved from the CC field in a message; the copied recipient(s)	Emails
BCC	Names retrieved from the BCC field in a message; the blind copied recipient(s)	Emails
EmailSubject	Email subject line	Emails
Date Sent	The date an email message was sent	Emails
Time Sent	The time an email message was sent	Emails
Date Received	The date an email message was received	Emails
Time Received	The time an email message was received	Emails
Author	File Author	Loose Native Files and Email Attachments
Title	File Title	Loose Native Files and Email Attachments
Subject	File Subject	Loose Native Files and Email Attachments
Date Created	Date a document was created by the file system	Loose Native Files and Email Attachments
Time Created	Time a document was created by the file system	Loose Native Files and Email Attachments
Date Modified	Last date a document was modified and recorded by the file system	Loose Native Files and Email Attachments
Time Modified	Last time a document was modified and recorded by the file system	Loose Native Files and Email Attachments
Date Printed	Last date a document was printed and recorded by the file system	Loose Native Files and Email Attachments
Time Printed	Last time a document was printed and recorded by the file system	Loose Native Files and Email Attachments

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 012 3145

Nature and Scope of Investigation:

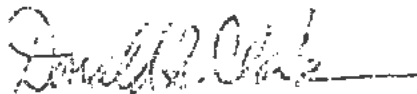
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain monetary relief would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission,


Donald S. Clark
Secretary

Issued: April 1, 2016

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
 Maureen K. Ohlhausen
 Terrell McSweeney

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NON-PUBLIC
INVESTIGATION OF UNNAMED PERSONS, PARTNERSHIPS OR CORPORATIONS
ENGAGED IN THE DECEPTIVE OR UNFAIR USE OF E-MAIL, METATAGS,
COMPUTER CODE OR PROGRAMS, OR DECEPTIVE OR UNFAIR PRACTICES
INVOLVING INTERNET-RELATED GOODS OR SERVICES

File No. 9923259

Nature and Scope of Investigation:

To determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services, in violation of Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52, as amended. The investigation is also to determine whether Commission action to obtain equitable monetary relief for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. Part 1.1 et seq. and supplements thereto.

By direction of the Commission,



Donald S. Clark
Secretary

Issued: August 1, 2016

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF UNAUTHORIZED CHARGES TO CONSUMERS' ACCOUNTS

File No. 082 3247

Nature and Scope of Investigation:

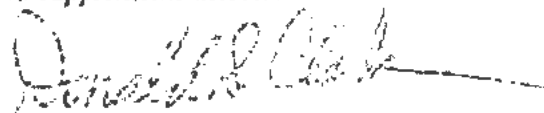
To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers' accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods or services, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* The investigation is also to determine whether Commission action to obtain monetary relief, including consumer redress, disgorgement, or civil penalties, would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 0 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, *et seq.*, and supplements thereto, Section 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and Regulation E, 12 C.F.R. § 205.1, *et seq.*, and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: October 22, 2018

CERTIFICATION OF COMPLIANCE

Pursuant to 28 U.S.C. § 1746

I, _____, certify the following with respect to the Federal Trade Commission's ("FTC") Civil Investigative Demand directed to Complete Merchant Solutions, LLC (the "Company") (FTC File No. 1723020) (the "CID"):

1. The Company has identified all documents, information, and/or tangible things ("responsive information") in the Company's possession, custody, or control responsive to the CID and either:

(a) provided such responsive information to the FTC; or

(b) for any responsive information not provided, given the FTC written objections setting forth the basis for withholding the responsive information.

2. I verify that the responses to the CID are complete and true and correct to my knowledge.

I certify under penalty of perjury that the foregoing is true and correct.

Date: _____

Signature

Printed Name

Title

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by **Complete Merchant Solutions, LLC** (the "Company") and attached hereto.
3. The documents produced and attached hereto by the Company are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of the Company; and
 - c) Were made by the regularly conducted activity as a regular practice of the Company.

I certify under penalty of perjury that the foregoing is true and correct.

Date: _____

Signature

Petition Exhibit 8

2019 CID Federal Express Delivery Confirmation

(Nov. 8, 2019)

Harris, Sherri CTR

From: TrackingUpdates@fedex.com
Sent: Friday, November 08, 2019 2:52 PM
To: Harris, Sherri CTR
Subject: FedEx Shipment 776918586628 Delivered

Your package has been delivered

Tracking # 776918586628

Ship date:
Wed, 11/6/2019

Sherri Harris
Federal
Washington, DC 20024
US

Delivery date:
Fri, 11/8/2019 12:49 pm

Complete Merchant Solutions LLC
Attn: David M. Decker, Jr.
3rd Floor
727 North 1550 East
OREM, UT 84097
US



Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	776918586628
Status:	Delivered: 11/08/2019 12:49 PM Signed for By: C.RICHMODD
Purchase order number:	0612
Reference:	1723020/596552
Signed for by:	C.RICHMODD
Delivery location:	OREM, UT
Delivered to:	Receptionist/Front Desk
Service type:	FedEx 2Day®
Packaging type:	FedEx® Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday Direct Signature Required
Standard transit:	11/8/2019 by 4:30 pm

Petition Exhibit 9

Letter from Laura Basford to Complete Merchant Solutions, LLC

(November 6, 2019)



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Laura Basford
Attorney
Division of Marketing Practices
Bureau of Consumer Protection

November 6, 2019

VIA EMAIL

Allison W. Buchner, Esq.
Mark C. Holscher, Esq.
Kirkland & Ellis LLP
333 South Hope St.
29th Floor
Los Angeles, CA 90071

Timothy J. Muris, Esq.
Andrew J. Strenio Jr., Esq.
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005

**RE: Civil Investigative Demand Issued to Complete Merchant Solutions, LLC
("CMS") by the Federal Trade Commission ("FTC"); File No. 1723020**

Dear Counsel:

We write in response to your October 25, 2019 letter, in which CMS again refused to supplement its response to the August 18, 2017 civil investigative demand ("CID"), despite our repeated requests that it do so. The CID requires CMS to provide sworn responses to interrogatories and produce documents relating to Merchant-clients who are the subject of any law enforcement inquiry to CMS. CMS has now received five law enforcement inquiries about its merchant-clients for which it has failed to supplement its CID response.¹

CMS has an ongoing obligation, under the CID, to supplement its response to the CID to include documents and sworn interrogatory responses regarding the merchants related to these law enforcement actions and non-public investigations:

- (1) FTC Matter No. [REDACTED], CID issued August 22, 2019, which seeks information and documents relating to [REDACTED] and affiliated individuals and companies;

¹ Since our October 21, 2019 letter, the FTC and the State of Utah have filed another action against companies for which CMS provided processing services, *FTC and Utah Div. of Consumer Protection v. Nudge, LLC et al.*, No. 19-cv-00867 (D. Utah November 5, 2019). CMS previously received a CID from the FTC seeking documents and information regarding the Nudge, LLC merchants on or about April 17, 2018.

- (2) FTC Matter No. [REDACTED], CID issued August 26, 2019, which seeks information and documents relating to [REDACTED] and affiliated individuals and companies;
- (3) *Utah Div. of Consumer Protection v. Troy Stevens, et al.* action. No. 19-cv-00441 (D. Utah June 24, 2019) & *Utah Div. of Consumer Protection v. Troy Stevens, et al.*, No. 190907053 (3d Jud. Dist. Ct., Salt Lake County, Sept. 10, 2019);
- (4) *FTC and Utah Div. of Consumer Protection v. Zurixx, LLC et al.*, No. 19-cv-00713 (D. Utah September 30, 2019); and
- (5) *FTC and Utah Div. of Consumer Protection v. Nudge, LLC et al.*, No. 19-cv-00867 (D. Utah November 5, 2019).

In your October 25 letter, you state that you were unaware of any authority requiring CMS to continue to comply with the CID. That authority lies in the plain language of the CID. CMS never provided a sworn statement under oath that CMS's response to the CID was complete. The Applicable Time Period of the CID extends "until the date of full and complete compliance with this CID," and the CID requires that CMS "certify that such responses are complete" by completing the "Form of Certificate of Compliance," included with the CID, or by signing a declaration under penalty of perjury that CMS's responses are complete. CMS has done neither.

Nevertheless, to remove any uncertainty or concern, whether colorable or not, enclosed please find a courtesy copy of a new CID to CMS that seeks documents and information related to the five law enforcement matters listed above. Note that the return date for the new CID is November 19, 2019. We continue to reserve all rights of the Commission to enforce the original CID and this new CID.

Finally, at no point, whether at our September 10, 2019 meeting or elsewhere, have we represented or suggested that CMS is relieved from its obligations to produce responsive documents and information called for by the CID.

Sincerely,



Laura Basford

Attachment

Petition Exhibit 10

Letter from Allison Buchner to Laura Basford

(November 19, 2019)

FILED UNDER SEAL

Petition Exhibit 11

Letter from Laura Basford to Complete Merchant Solutions, LLC

(November 22, 2019)



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Laura C. Basford
Attorney
Division of Marketing Practices
Bureau of Consumer Protection

November 22, 2019

VIA EMAIL

Allison W. Buchner, Esq.
Mark C. Holscher, Esq.
Kirkland & Ellis LLP
333 South Hope St.
29th Floor
Los Angeles, CA 90071

Timothy J. Muris, Esq.
Andrew J. Strenio Jr., Esq.
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005

Re: Civil Investigative Demand (“CID”) Issued to Complete Merchant Solutions, LLC (“CMS”) on November 6, 2019 by the Federal Trade Commission; File No. 1723020

Dear Counsel:

We write in response to your November 19, 2019 letter regarding the CID. At the outset, we note that CMS has failed to produce any documents or interrogatory responses by the return date of the CID. While we are willing to seek a modification of the CID to provide some limited additional time for CMS to make its production, time is of the essence.

In your letter, you claim that, on our November 15 call, we “confirmed” that our most recent CID seeks information provided in connection with [REDACTED] Nudge, LLC, and [REDACTED] (“CMS Merchant Matters”), which we had previously told you would not be used in our investigation of CMS. You also claim that the case teams working on the CMS Merchant Matters made the same representation. As we previously stated, no such statements were made.

Troy Stevens Underwriting Files: On our November 15, 2019 call, you said that, other than the underwriting files for the defendants in the *Utah Div. of Consumer Protection v. Troy Stevens* matter, CMS had already provided all of the underwriting files requested by our CID. You also said that CMS would provide the *Troy Stevens* underwriting file, but you now claim that, because parts of

the files are nearly 10 years old, you do not believe they are relevant. With all due respect, this is not a call for CMS to make.

The Utah Division of Consumer Protection sued Troy Stevens for running an unlawful real estate seminars scheme in July 2019, and CMS provided payment processing services to Troy Stevens right until it was sued by the Division and a temporary restraining order was issued. The details of CMS's interactions with the *Troy Stevens* defendants are relevant to our investigation. We need the complete underwriting files to understand fully CMS's interactions with, and any due diligence done, regarding the *Troy Stevens* defendants.¹ You do not claim that CMS no longer has access to the files or that it would be burdensome to produce them. CMS should produce the *Troy Stevens* underwriting files by Monday, November 25.

Chuckanut Bay Investments LLC Account (MID: 51579400000832): As we discussed on our November 15 call, this merchant account is a Subject Account that is responsive to the CID. Therefore, CMS should produce the full underwriting file for this account by Wednesday, November 27. CMS should also provide full interrogatory responses and produce other documents and emails as directed by the CID relating to this account.

Search Terms: As discussed on our call, we are providing search terms for CMS to use to search its emails and electronic files, including the CForce system and other electronic databases CMS may use. The terms include the MIDs, corporate names, and individual names associated with the Merchant-clients that are the subject of the CID. Should CMS become aware of additional MIDs, individuals, or corporate entities used by the Merchant-clients identified in the CID, CMS should add those additional terms to the list and inform us of those additions. The attached list of terms should be used to search both the text and metadata of CMS's emails and electronic files, and the searches should include results in which the search term is located within a longer word or phrase. For example, running the search term "Zurrix" should produce documents that contain email addresses with the domain "zurixx.com."

CMS should run all the attached search terms against all CMS employees' email and electronic files and provide us with a figure for how many documents will need to be reviewed, along with a proposed timeline for production, by Wednesday, November 27.² We also reserve the right to add additional search terms, should CMS's responses to the CID disclose additional merchant accounts that are responsive to the CID.

Custodians: You told us that when you made productions in the CMS Merchant Matters, you searched the Outlook accounts of every CMS employee. CMS should do the same here. As it represented it did with respect to the original CID, CMS should also search David M. Decker, Jr.'s

¹ During our investigational hearings in this matter, CMS counsel repeatedly objected to FTC questions about specific portions of underwriting files on the grounds that the witness would need to review the entire underwriting file to be able to provide an adequate answer.

² CMS has only raised questions about portions of our CID. In addition to addressing CMS's e-mail and electronic file production, the timeline should also include a schedule for CMS complying with the portions of our CID to which CMS has not objected, including the interrogatories.

and Jack Wilson's personal email accounts, because they used those accounts to conduct CMS business.

Please confirm by close of business on Monday, November 25 that CMS will comply with the deadlines set forth in this letter. As we discussed on our call, we have a mutual interest in resolving this matter efficiently and quickly.

Sincerely,

A handwritten signature in blue ink that reads "Laura C. Basford". The signature is written in a cursive style.

Laura C. Basford

cc: Kristin Rose, Esq.

Attachment

Attachment to November 22, 2019 Letter to CMS

Civil Investigative Demand Issued to Complete Merchant Solutions, LLC on November 6, 2019
by the Federal Trade Commission; File No. 1723020

Search Terms

1. Zurixx
2. Carlson Development Group
3. CJ Seminar Holdings
4. Chuckanut
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. Prosperity International
9. Flip and Build Wealth
10. Real Estate Workshop
11. PLI LLC
12. Prosperity Learning
13. Opus Management Group
14. Mantis Management
15. Selective Marketing
16. Bo-Roc Management
17. Nudge
18. Response Marketing Group
19. 3 Day Real Estate Training
20. Abundance Edu
21. Affluence Edu
22. American Money Tour
23. Cash Flow Edu
24. Clark Edu

Attachment to November 22, 2019 Letter to CMS

Civil Investigative Demand Issued to Complete Merchant Solutions, LLC on November 6, 2019
by the Federal Trade Commission; File No. 1723020

Search Terms

25. Edge 2 Real Estate
26. EVTech Media North
27. Flip for Life
28. Flipping for Life
29. Income Events
30. Insider's Financial Education
31. Leading Financial Education
32. OnWealth
33. Power Flip
34. Prosper Live
35. Property Education
36. Renovate to Rent
37. Simple Real Estate Training
38. Smart Flip
39. Snap Flip
40. US Education Advance
41. Vintage Flip
42. Visionary Events
43. Wealth Tribe
44. Women's Empowerment
45. Yancey
46. Your Real Estate Today
47. BUYPD
48. [REDACTED]

Attachment to November 22, 2019 Letter to CMS
Civil Investigative Demand Issued to Complete Merchant Solutions, LLC on November 6, 2019
by the Federal Trade Commission; File No. 1723020
Search Terms

- 49. [REDACTED]
- 50. [REDACTED]
- 51. [REDACTED]
- 52. [REDACTED]
- 53. [REDACTED]
- 54. [REDACTED]
- 55. Cannon
- 56. [REDACTED]
- 57. Spangler
- 58. Eric Richardson
- 59. [REDACTED]
- 60. [REDACTED]
- 61. [REDACTED]
- 62. [REDACTED]
- 63. Troy Stevens
- 64. Wadsworth
- 65. Bove
- 66. Brandon Lewis
- 67. Poelman
- 68. Phillip Smith
- 69. Shawn Finnegan
- 70. Sanderson
- 71. [REDACTED]
- 72. [REDACTED]

Attachment to November 22, 2019 Letter to CMS

Civil Investigative Demand Issued to Complete Merchant Solutions, LLC on November 6, 2019
by the Federal Trade Commission; File No. 1723020

Search Terms

- 73. [REDACTED]
- 74. [REDACTED]
- 75. [REDACTED]
- 76. 513485000000190
- 77. 513485000005157
- 78. 8788117000236
- 79. 8788117000210
- 80. 513485000000257
- 81. 513485000310102
- 82. 513485000341198
- 83. 513485000000216
- 84. 513485000002477
- 85. 513485000006627
- 86. 513485000007112
- 87. 513485000007187
- 88. 513485000007195
- 89. 513485000008185
- 90. 513485000105056
- 91. 513485000108894
- 92. 513485000108902
- 93. 513485000108910
- 94. 513485000108969
- 95. 513485000006114
- 96. 513485000206615

Attachment to November 22, 2019 Letter to CMS

Civil Investigative Demand Issued to Complete Merchant Solutions, LLC on November 6, 2019
by the Federal Trade Commission; File No. 1723020

Search Terms

- 97. 513485000303404
- 98. 513485000303438
- 99. 513485000303453
- 100. 513485000303461
- 101. 513485000303487
- 102. 513485000303503
- 103. 513485000303529
- 104. 513485000303545
- 105. 513485000304121
- 106. 513485000309591
- 107. 513485000310342
- 108. 513485000314237
- 109. 513485000329144
- 110. 513485000329169
- 111. 513485000329185
- 112. 513485000329201
- 113. 513485000335141
- 114. 513485000340984
- 115. [REDACTED]
- 116. [REDACTED]
- 117. [REDACTED]
- 118. [REDACTED]
- 119. [REDACTED]
- 120. [REDACTED]

Attachment to November 22, 2019 Letter to CMS

Civil Investigative Demand Issued to Complete Merchant Solutions, LLC on November 6, 2019
by the Federal Trade Commission; File No. 1723020

Search Terms

121. 515794000000832
122. Eric.w.richardson@gmail.com
123. jamesmichaelcarlson@gmail.com
124. Magistro

Petition Exhibit 12

Letter from Christine Todaro to Complete Merchant Solutions, LLC

(December 4, 2019)



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

Christine M. Todaro
Attorney
Division of Marketing Practices
Bureau of Consumer Protection

December 4, 2019

VIA EMAIL

Allison W. Buchner, Esq.
Mark C. Holscher, Esq.
Kristin Rose, Esq.
Kirkland & Ellis LLP
333 South Hope St.
29th Floor
Los Angeles, CA 90071

Timothy J. Muris, Esq.
Andrew J. Strenio Jr., Esq.
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005

Re: Civil Investigative Demand (“CID”) Issued to Complete Merchant Solutions, LLC (“CMS”) on November 5, 2019 by the Federal Trade Commission (“FTC”); File No. 1723020

Dear Counsel:

This letter follows our teleconference earlier today during which we discussed the CID issued to CMS by the FTC on November 5, 2019. Laura Basford and I were on the call for the FTC, and Allison Buchner, Kristin Rose, and Andy Strenio were present on behalf of CMS.¹

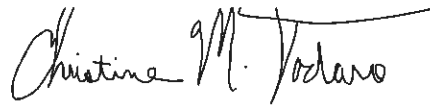
To date, CMS has not complied with the CID. It has provided no responses to the interrogatories, and, besides re-producing documents that CMS already produced to the FTC in other matters, it has produced no documents in response to the CID’s document requests. During the teleconference, Ms. Buchner represented that CMS is not prepared to discuss whether it will comply with the CID. She stated that she would need to confer with CMS as to whether CMS will comply with the CID, and that we could expect CMS to send us a letter sometime next week regarding the CID. This is unacceptable.

¹ Prior to discussing the CID, Mark Holscher on behalf of CMS and Len Gordon on behalf of David Decker participated in the call, but were not present for the CID discussion.

The CID bore a return date of November 19, 2019. During a meet and confer teleconference about the CID on November 15, 2019, Ms. Buchner did not represent that CMS would not comply with the CID. Instead, Ms. Buchner promised that CMS would produce underwriting files for merchant accounts held by CMS merchant-client Troy Stevens within a week. CMS did not do so. Moreover, CMS neither sought an extension of the return date nor filed a motion to quash the CID. Accordingly, CMS was required to answer the interrogatories and produce the documents requested by the CID by November 19, 2019. It did not.

Due to CMS's refusal to comply with the CID to date, we have referred this matter to the Office of General Counsel for judicial enforcement of the CID. CMS should complete fully its response to the CID by Friday, December 13, 2019, and certify compliance by that date. If it does not, we will proceed to enforce the CID.

Sincerely,

A handwritten signature in black ink that reads "Christine M. Todaro". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Christine M. Todaro

Petition Exhibit 13

Letter from Allison Buchner to Christine Todaro

(December 5, 2019)

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Allison W. Buchner
To Call Writer Directly:
+1 213 680 8154
allison.buchner@kirkland.com

333 South Hope Street
Los Angeles, CA 90071
United States

+1 213 680 8400

www.kirkland.com

Facsimile:
+1 213 680 8500

December 5, 2019

Via Email

Christine M. Todaro, Attorney
Division of Marketing Practices
Bureau of Consumer Protection
FEDERAL TRADE COMMISSION
Washington, DC 20580

Re: Civil Investigative Demand (“CID”) Issued to Complete Merchant Solutions, LLC (“CMS”) on November 5, 2019 by the Federal Trade Commission (“FTC”);
File No. 1723020

Dear Christine:

I write in response to your letter yesterday regarding the FTC’s November 5, 2019 CID to CMS. Your letter misstates the record in multiple respects.

As an initial matter, your statement that CMS “neither sought an extension of the return date nor filed a motion to quash the CID” is wholly inaccurate. CMS met and conferred with you and your colleagues on November 15 for the express purpose of seeking an extension of time to respond to the CID. As you know, during our November 15 conversation, I informed you that CMS would not be able to produce the voluminous records requested by the FTC by November 19, and we discussed search parameters and next steps on that same call. At the end of that call, your colleagues requested that CMS provide certain information regarding its prior productions and anticipated production timeline before you could or would seek an extension of time from the appropriate FTC personnel. We understood that you were amenable to such an extension, but simply needed more information from us to secure permission from your supervisor(s). CMS’s November 19 letter to your colleague Laura Basford confirms as much, as we requested that the FTC provide a list of proposed search terms so that CMS could determine a production timeline. You responded on November 22 with a proposed list of search terms, and, as I explained to you yesterday, we have been working with our client to understand the volume of documents under those broad parameters, and the search yielded hundreds of thousands of documents (many of which we believe to be false positives). This is simply not a reasonable burden to impose on CMS—a company that has already produced voluminous records and testimony. Indeed, in response to the FTC’s serial demands over a more than two-year period,

KIRKLAND & ELLIS LLP

Christine M. Todaro
December 5, 2019
Page 2

CMS has produced hundreds of thousands of pages of documents—475,000 pages in response to two CIDs in this matter alone, and nearly 4,000 additional pages in response to CIDs issued in investigations regarding other targets/entities. These efforts have come at a significant expense to CMS's business. Moreover, while the FTC previously assured CMS during an in-person meeting and on various calls that for those CIDs issued in connection with other matters, it sought only to use the requested documents in investigations of other targets, and not its investigation against CMS (which we believed we were working in good faith to resolve), the FTC later reversed course on those representations.

Your statement that CMS promised to provide underwriting files for merchant accounts associated with Troy Stevens is also incorrect. During our November 15 call, I made clear that we were still evaluating our response and discussing the CID with our client. As I explained both during our call and again in our November 19 letter, we cannot understand how decade-old underwriting files for accounts that are now closed are even remotely relevant to the FTC's investigation.

Notwithstanding the above, as I explained on our call yesterday, CMS is considering whether and how to further respond to the November 5 CID, and we will provide a further response next week. Given that we have been engaged in discussions that could have resolved this matter entirely (though we understand we are now at an impasse) and the intervening Thanksgiving holiday, this timeline is more than reasonable, and we are confident that any judge would agree. Any enforcement action relating to the new CID is thus premature.

Sincerely,

A handwritten signature in black ink that reads "Allison W. Buchner". The signature is written in a cursive, slightly slanted style.

Allison W. Buchner

Petition Exhibit 14

Letter from Allison Buchner to Christine Todaro

(December 13, 2019)

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Allison W. Buchner
To Call Writer Directly:
+1 213 680 8154
allison.buchner@kirkland.com

333 South Hope Street
Los Angeles, CA 90071
United States

+1 213 680 8400

www.kirkland.com

Facsimile:
+1 213 680 8500

December 13, 2019

VIA EMAIL

Christine M. Todaro
Federal Trade Commission
600 Pennsylvania Ave. NW
Mailstop: CC-8528
Washington DC 20580

Re: Civil Investigative Demand (“CID”) Issued to Complete Merchant Solutions, LLC (“CMS”) on November 5, 2019 by the Federal Trade Commission (“FTC”); File No. 1723020

Dear Christine:

We write in further response to your December 4, 2019 letter and December 5, 2019 email.

For more than two and a half years, Complete Merchant Solutions (“CMS”) has cooperated with the FTC’s serial CIDs and demands, an effort that has immensely burdened CMS’s business. Over the course of two and a half years, the FTC has served numerous far-reaching CIDs on CMS: the August 21, 2017 and May 16, 2019 CIDs to CMS in this matter, the August 22, 2019 CID regarding [REDACTED], the August 27, 2019 CID regarding [REDACTED], and now the November 6, 2019 CID to CMS. In response to these sweeping demands, CMS has expended significant time and resources, and has produced hundreds of thousands of pages of documents, detailed interrogatory responses, and multiple witnesses to provide sworn testimony. These efforts have come at a significant expense to CMS’s business. Notably, despite obtaining those hundreds of thousands of pages of documents, detailed interrogatory responses, and multiple days of sworn testimony, the FTC has not identified a single merchant account that would satisfy its burden to demonstrate ongoing or imminent harm under *FTC v. Shire ViroPharma*, 917 F.3d 147 (3d Cir. 2019). The FTC’s increasingly overbroad CID demands are plainly an attempt to rectify this fatal defect in its draft complaint.

What’s more, the FTC has sought this overbroad and burdensome administrative discovery while misrepresenting its intentions to CMS regarding its use of this information and

KIRKLAND & ELLIS LLP

Christine M. Todaro
December 13, 2019
Page 2

resolution of this matter. Indeed, while the FTC Staff previously represented to CMS that information produced in response to CIDs in investigations of other targets such as [REDACTED] and [REDACTED] would not be used in the investigation of CMS, the FTC's most recent CID to CMS seeks to do exactly that. And the FTC issued its most recent CID in the midst of settlement negotiations that CMS believed were being conducted in good faith, undermining any notion that the FTC had any genuine interest in working with CMS to resolve the investigation amicably. As is clear from our correspondence, we fundamentally disagree with the FTC's assertion that what it has done to CMS -- issue serial CIDs, all while simultaneously purporting to be negotiating a settlement in good faith (a settlement that would, if successful, resolve the very matter to which the November 6 CID relates) -- is proper.

As you know, CMS has also filed an action for a declaratory judgment, which challenges the FTC's very authority to bring any action against CMS in connection with the provision of its ISO services, and addresses what we believe is the FTC's misuse of the CID process. Given these fundamental differences in opinion, as well as CMS's stated challenges to the scope, breadth and relevance of the FTC's requests and the disproportionate burden that responding to those requests would place on CMS, we believe the parties would benefit from having a neutral arbiter weigh in on the scope of permissible or required production. While CMS is open to further meeting and conferring with the FTC regarding a reasonable scope of production for information the FTC legitimately needs for its investigations of other targets (if any), CMS will not permit the FTC Staff to continue to misuse the CID process to harass CMS and conduct a fishing expedition that would not be permitted under the Federal Rules of Civil Procedure. To that end, it is our position that the most proper and prudent course is for any future requests for information and related productions to occur in the litigation through the discovery process as permitted by the Federal Rules of Civil Procedure and on a schedule to be set by the Court.

Thank you.

Sincerely,

/s/ Allison Buchner

Allison Buchner

cc: Laura Basford, Esq.

AWB/ig

Michele Arington
marington@ftc.gov
Christine M. Todaro
ctodaro@ftc.gov
Laura Basford
lbasford@ftc.gov
Benjamin R. Davidson
bdavidson@ftc.gov
(Each appearing pursuant to DUCivR 83-1.1(d)(1))
Counsel for Petitioner
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW
CC-8528
Washington, DC 20580
Tel.: 202-326-3157
Fax: 202-326-3395

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

Federal Trade Commission,

Petitioner,

vs.

Complete Merchant Solutions, LLC

Respondent.

Case No.:

[PROPOSED] ORDER TO SHOW CAUSE

Judge

Petitioner, the Federal Trade Commission (“FTC”), under the authority conferred by Section 20 of the FTC Act, 15 U.S.C. § 57b-1 and Fed. R. Civ. P. 81(a)(5), has invoked the aid of this Court for an order requiring Respondent, Complete Merchant Solutions, LLC, to comply with a civil investigative demand (“CID”), issued to it on November 5, 2019, in aid of an FTC law enforcement investigation.

The Court has considered the FTC’s Petition to Enforce Civil Investigative Demand and the papers filed in support thereof; and it appears to the Court that Petitioner has shown good cause for the entry of this Order.

It is, therefore, ORDERED that, within _____ days after entry of this Order, by _____, 20____, Respondent shall

(1) Produce forthwith to the Commission: (a) all non-privileged documents responsive to the Commission's November 5, 2019 CID; (b) a privilege log listing all responsive documents withheld based upon a claim of privilege; (c) narrative responses to all interrogatories in the November 5, 2019, CID; and (d) sworn certifications as to the completeness of the production and interrogatory response;

OR

(2) By that date, file and serve (by hand or electronically via email) on counsel for the Commission its response to the Commission's petition. As Respondent did not file a petition to limit or quash the November 5, 2019, CID, any response to the Commission must demonstrate good cause for the failure to raise such objections previously. Absent such good cause shown, no objections that could have been, but were not, raised in an administrative petition to quash shall be considered. Any reply by the Commission to an opposition filed by Respondent shall be filed with the Court and served (by hand or electronically via email) on counsel for Respondent. Such reply shall be filed and served no later than _____ days after service of Respondent's opposition.

IT IS FURTHER ORDERED that if Respondent files an opposition, Respondent shall appear at ___ __ a.m./p.m. on the ____ day of _____, 2019, in Courtroom No. ____ of the United States Courthouse for the District of Utah, Salt Lake City, Utah, and show cause, if any there be, why this Court should not enter an order, subject to the penalty of contempt, directing them to comply with the Commission's November 5, 2019, CID. Unless the Court determines otherwise, notwithstanding the filing or pending of any procedural or other motions, all issues raised by the petition and supporting papers, and any opposition to the petition will be

considered at the hearing on the petition, and the allegations of said petition shall be deemed admitted unless controverted by a specific factual showing.; and

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 81(a)(5) and 26(a)(1)(B)(v), this is a summary proceeding and no party shall be entitled to discovery without further order of the Court upon a specific showing of need; and that the dates for a hearing and the filing of papers established by this Order shall not be altered without prior order of the Court upon good cause shown; and

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 81(a)(5) and its 1946 Advisory Committee note, a copy of this Order and copies of said Petition and exhibits filed therewith, shall be served forthwith by Petitioner upon Respondent and/or its counsel, using as expeditious means as practicable.

SO ORDERED, this __ day of _____ 2019.

UNITED STATES DISTRICT JUDGE