

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and over all parties pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345;
2. Venue is proper as to all parties in the District of Arizona pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d);
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
4. Plaintiff asserts that there is good cause to believe that Defendants have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, in connection with the provision of Automated Clearing House ("ACH") processing services to telemarketers, and that the Commission is therefore likely to prevail on the merits of this action;
5. Plaintiff asserts that the entry of this Order, as set forth below, is in the public interest;
6. No security is required of any agency of the United States for issuance of a Preliminary Injunction. Fed. R. Civ. P. 65(c); and

7. This Order does not constitute and shall not be interpreted as an admission by Defendants that they have engaged in violations of any law or regulations, including the Federal Trade Commission Act and the Telemarketing Sales Rule.

DEFINITIONS

For purposes of this Stipulated Preliminary Injunction Order, the following definitions shall apply:

1. "ACH network" shall mean the electronic funds transfer system governed by the NACHA Rules that provides for the interbank clearing of credit and debit entries to accounts at financial institutions.
2. "ACH debit" shall mean any completed or attempted debit to a consumer's account at a financial institution that is processed electronically through the ACH network.
3. "Client" shall mean any person, corporation, originator or other entity that has retained or contracted with Defendants for Defendants to provide services as a third-party processor or third-party originator of ACH transactions.
4. "Corporate Defendants" shall mean First American Payment Processing, Inc. ("FAPP"), CET Corp., and Check Processing Center, LLC.
5. "Credit-related goods or services" shall mean any: (a) good or service represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating; (b) loan or other extension of credit when the seller or

marketer of such goods or services has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person; (c) good or service that is represented, directly or indirectly, to have a characteristic described in (a) or (b) above, even if the good or service fails to fulfill such representation in fact.

6. "Defendants" shall mean First American Payment Processing, Inc. ("FAPP"), CET Corp., Check Processing Center, LLC, Matthew Robinson and Carl Towner.

7. "NACHA" shall mean the National Automated Clearing House Association.

8. "NACHA Rules" shall mean the NACHA Operating Rules, as amended from time to time.

9. "Plaintiff" shall mean the Federal Trade Commission.

10. "Telemarketing" shall mean a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, either exclusively or in conjunction with the use of other marketing techniques.

CONDUCT PROHIBITIONS

I.

IT IS THEREFORE AGREED AND ORDERED that Defendants, and each of them, and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this

Order by personal or otherwise, whether acting directly through any corporation, subsidiary, division, or other entity, are hereby restrained and enjoined from.

- A. Processing ACH debits for any Client engaged in the telemarketing of credit-related goods or services and
- B. Processing any telephone-initiated debit of consumer' bank account for any Client where the Client initiated the telephone call to the consumer and the Client does not have an existing relationship (within the meaning of the NACHA TEL Rule) with the consumer.

II.

IT IS FURTHER AGREED AND ORDERED that Defendants and each of them, and their sors, assigns, officers, agents servants, employees, those persons in activ concert or participation with them who actual noti this Order by personal service or otherwise, whether acting directly through any corporation, subsidiary division, or other entity hereby restrained and enjoined from violating any provision of the TSP, 6 C.F.R. Part 10, including but limited to providing substantial assistance or support to any seller" "telemarketer" as those terms are defined in the TSR) when Defendants. of them, know consciously avoid knowing that the seller or telemarketer is engaged

- A. inducin to pay for goods and services through the of false or misleading statements in violation of Section 3(a)(of the TSR;

- B. representing that after paying an advance fee, consumers are guaranteed or highly likely to receive a credit card or extension of credit, in violation of Section 310.4(a)(4) of the TSR.

MAINTENANCE OF CURRENT BUSINESS RECORDS

III.

IT IS FURTHER AGREED AND ORDERED that Defendants and each of them, and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, shall maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money.

DISCLOSURE OF RELATED BUSINESS ENTITIES

IV.

IT IS FURTHER AGREED AND ORDERED that Defendants and each of them, and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity are enjoined from creating, operating, or exercising any control over any business entity engaged in the processing of ACH

transactions, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

DISCOVERY

V.

IT IS FURTHER AGREED AND ORDERED that, pursuant to Fed. R. Civ. P. 26(d), discovery may commence at any time after the entry of this Order, provided that no depositions shall be taken by any party prior to March 4, 2004.

DISTRIBUTION OF ORDER BY DEFENDANTS

VI.

IT IS FURTHER AGREED AND ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, successor, assign, officer, director, employee, independent contractor, Client engaged in telemarketing, agent, attorney, spouse and representative of Defendants, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that Defendants have complied with this provision of the Order, which

statement shall include the names and addresses of each such person or entity who received a copy of the Order.

RETENTION OF JURISDICTION

VII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO STIPULATED:

**FOR PLAINTIFF
FEDERAL TRADE COMMISSION**

FOR ALL DEFENDANTS

Date: January 20, 2004

Date: 1-20-04

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SO ORDERED:

DATED this 20 day of January, 2004.

Susan R. Bolton
Honorable Susan R. Bolton
United States District Judge