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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Federal Trade Commission,

Plaintiff,

v.

Electronic Payment Solutions of America Incorporated, et al.,

Defendants.

No. CV-17-02535-PHX-SMM

JUDGMENT AND PERMANENT INJUNCTION

Before the Court is Plaintiff Federal Trade Commission's Motion for Entry of Stipulated Order for Permanent Injunction and Judgment Against Defendant Michael Peterson. (Doc. 157.)

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed its First Amended Complaint ("Complaint") for a permanent injunction and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101–6108. The FTC and Defendant Michael Peterson ("Settling Defendant") stipulate to the entry of this Order ("Order") to resolve all matters in dispute related to this action between them.

After review and consideration, and pursuant to the parties' stipulation,

IT IS HEREBY ORDERED granting Plaintiff Federal Trade Commission's Motion for Entry of Stipulated Order for Permanent Injunction and Judgment Against Defendant Michael Peterson (Doc. 157), regarding Defendant Michael Peterson only.

IT IS FURTHER ORDERED directing the Clerk of Court to terminate Defendant Michael Peterson only. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds no reason for just delay.

IT IS FURTHER ORDERED as follows:

FINDINGS

- 1. This Court has jurisdiction over this matter.
- 2. The Complaint charges that Settling Defendant participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Trade Regulation Rule entitled Telemarketing Sales Rule ("TSR" or "Rule"), 16 C.F.R. Part 310, by his involvement in a credit card laundering scheme.
- 3. Settling Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling Defendant admits the facts necessary to establish jurisdiction.
- 4. Settling Defendant waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney's fees.
- 5. Settling Defendant waives all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- 1. "ACH Debit" means any completed or attempted debit to a Person's account at a financial institution that is processed electronically through the Automated Clearing House Network ("ACH Network").
- 2. "ACH Transaction" means any transaction involving a Person's account at a financial institution that is processed electronically through the ACH Network.
- 3. "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 (e.g., VISA, MasterCard, American Express,

and Discover) 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.

4. "Chargeback" means a procedure whereby an issuing bank or other financial institution charges all or part of an amount of a Person's credit or debit card transaction back to the Acquirer or merchant bank.

5. "Credit Card Laundering" means:

- a) Presenting or depositing into, or causing or allowing another to present or deposit into, the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant;
- b) Employing, soliciting, or otherwise causing or allowing a Merchant, or an employee, representative, or agent of a Merchant, to present to or deposit into the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant; or
- c) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a Merchant, when such access is not authorized by the Merchant Account agreement or the applicable credit card system.
- 6. "Credit Card Sales Draft" means any record or evidence of a credit card transaction.
- 7. "Independent Sales Organization" or "ISO" means any Person or entity that (a) enters into an agreement or contract with a Payment Processor, Acquirer or financial institution to sell or market Payment Processing services to a Merchant; (b) matches, arranges, or refers Merchants to a Payment Processor or Acquirer for Payment Processing services, or that matches, arranges, or refers a Payment Processor or Acquirer to Merchants for Payment Processing services; or (c) is registered as an ISO or merchant service provider ("MSP") with VISA, MasterCard, or any credit card association.

- 8. "Merchant" means any Person or entity engaged in the sale or marketing of any goods or services or a charitable contribution, including any Person who applies for ISO or Payment Processing services.
- 9. "Merchant Account" means an account with an Acquirer that authorizes and allows a Merchant to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.
- "Money Now Funding" or "Money Now Funding Enterprise" means the 10. entities and individuals named as defendants in FTC v. Money Now Funding, LLC, et al., CV 13-01583-PHX-ROS (D. Az. 2013), including Money Now Funding, LLC, Rose Marketing, LLC, Green Merchant Funding, Nationwide Lending, DePaola Marketing, LLC, Affiliate Marketing Group, LLC, Legal Doxs, LLC, US Doc Assist, LLC, Affinity Technologies, LLC, Marketing Expert Solutions, LLC, Global Network Marketing, LLC, Precise Payroll Services, LLC, Strategic Media Advertising, LLC, Lukeroy K. Rose, Cordell Bess, Cynthia Miller, Solana DePaola, Jennifer Beckman, William D. Claspell, Richard Frost, Dino Mitchell, Clinton Rackley, Lance Himes, Leary Darling, Donna F. Duckett (dba D&D Marketing Solutions), Della Frost (dba ZoomDocs), Christopher Grimes (dba Elite Marketing Strategies), Alannah M. Harre (dba National Marketing Group), Ronald W. Hobbs (dba Ron Hobbs & Associates), Janine Lilly (dba Doc Assistant), Michael McIntyre (dba McIntyre Marketing), Benny Montgomery (dba Montgomery Marketing), Virginia Rios (dba V&R Marketing Solutions), and Kendrick Thomas (dba KT Advertising), and any other entity owned or controlled by Lukeroy Rose or Solana DePaola.
- 11. "Payment Processing" means providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment method or mechanism, including, but not limited to, credit cards, debit cards, prepaid cards, stored value cards, ACH Debits, and Remotely Created Payment Orders. Whether accomplished through the use of software or otherwise, Payment Processing includes, among other things: (a) reviewing and approving Merchant applications for payment processing

services; (b) providing the means to transmit sales transaction data from Merchants to acquiring banks, Payment Processors, ISOs, or other financial institutions; (c) clearing, settling, or distributing proceeds of sales transactions from acquiring banks or financial institutions to Merchants; or (d) processing Chargebacks or returned Remotely Created Payment Orders, checks or ACH Transactions.

- 12. "Payment Processor" means any Person providing Payment Processing services in connection with another Person's sale of goods or services, or in connection with any charitable donation.
- 13. "**Person**" means any natural person or any entity, corporation, partnership, or association of persons.
- 14. "Remotely Created Payment Order" or "RCPO" means a payment instruction or order, whether created in electronic or paper format, drawn on a payor's account that is initiated or created by or on behalf of the payee, and which is deposited into or cleared through the check clearing system. For purposes of this definition, an account includes any financial account or credit or other arrangement that allows checks, payment instructions, or orders to be drawn against it that are payable by, through, or at a bank.
- 15. "Sales Agent" means a Person that matches, arranges, or refers Merchants to a Payment Processor, ISO, Sales Agent, or Acquirer for ISO or Payment Processing services. As such, a Sales Agent may be involved in recommending a particular ISO, Payment Processor, or Acquirer to a Merchant, or in recommending a particular Merchant to an ISO, Payment Processor, or Acquirer. For purposes of this definition, a Sales Agent does not necessarily use the title "sales agent," and includes Persons, independent contractors, sales representatives, sub-agents, and sub-ISOs (however titled) working for or under a Sales Agent's office who refer Merchants to a Sales Agent or ISO for Payment Processing services.
 - 16. "Settling Defendant" means Michael Peterson.

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I.

Ban Against Payment Processing or Acting as an ISO or Sales Agent

IT IS ORDERED that Settling Defendant, whether acting directly or indirectly, is permanently restrained and enjoined from Payment Processing or acting as an ISO or Sales Agent.

II.

Prohibition Against Credit Card Laundering

IT IS FURTHER ORDERED that Settling Defendant, whether acting directly or indirectly, is permanently restrained and enjoined from Credit Card Laundering.

III.

Monetary Judgment and Suspension

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of five million seven hundred sixty-six thousand eight hundred sixty-eight dollars (\$5,766,868) is entered in favor of the Commission against Settling Defendant, jointly and severally, as equitable monetary relief. The judgment is suspended subject to the Subsections below.
- B. The Commission's agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of the Settling Defendant's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely: the Financial Statement of Settling Defendant signed on February 19, 2019.
- C. The suspension of the judgment will be lifted as to Settling Defendant if, upon motion by the Commission, the Court finds that Settling Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.
- D. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Settling Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury

alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

- E. Settling Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- F. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- G. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- H. Settling Defendant acknowledges that his Taxpayer Identification Number (Social Security Number), which Settling Defendant must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
- I. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Settling Defendant's practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Settling Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

IV.

Customer Information

IT IS FURTHER ORDERED that Settling Defendant, whether acting directly or indirectly, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that Settling Defendants obtained prior to entry of this Order in connection with the Money Now Funding Enterprise; and
- B. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order.
- *Provided, however*, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

V.

Cooperation

IT IS FURTHER ORDERED that Settling Defendant must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Settling Defendant must provide truthful and complete information, evidence, and testimony. Settling Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

VI.

Order Acknowledgments

IT IS FURTHER ORDERED that Settling Defendant obtain acknowledgments of receipt of this Order:

A. Settling Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 20 years after entry of this Order, Settling Defendant for any business that he, individually or collectively with any other defendant, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC members and managers; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Settling Defendant delivered a copy of this Order, he must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VII.

Compliance Reporting

IT IS FURTHER ORDERED that Settling Defendant make timely submissions to the Commission:

- A. One year after entry of this Order, Settling Defendant must submit a compliance report, sworn under penalty of perjury. Settling Defendant must:
 - Identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences, and Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Settling Defendant;

- 2) Identify all business activities, including any business for which Settling Defendant performs services whether as an employee or otherwise and any entity in which he has any ownership interest;
- 3) Describe in detail Settling Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.
- 4) Identify all of Settling Defendant's businesses by all of their names, telephone numbers, and physical, postal, email and Internet addresses;
- Describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant (which Settling Defendant must describe if he knows or should know due to his own involvement);
- 6) Describe in detail whether and how Settling Defendant is in compliance with each Section of this Order; and
- 7) Provide a copy of each Order Acknowledgement obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 20 years after entry of this Order, Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
 - 1) Name, including aliases or fictitious name, or residence address;
 - 2) Any designated point of contact;
 - Title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity; and

- The structure of any entity that Settling Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Settling Defendant within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:_____" and supplying the date, signatory's full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement Bureau of Consumer Protection Federal Trade Commission 600 Pennsylvania Avenue NW

Washington, DC 20580

The subject line must begin: FTC v. Electronic Payment Solutions of America, Inc., et al., Matter No. X170045.

VIII.

Recordkeeping

IT IS FURTHER ORDERED that Settling Defendant must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Settling Defendant, for any business that he, individually or collectively with any other defendants, is a majority owner or controls directly or indirectly, must create and maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each Person providing services, whether as an employee or otherwise, that Person's: name, addresses, telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Records of all consumer complaints, Chargebacks, and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
 - E. A copy of each unique advertisement or other marketing material.

IX.

Compliance Monitoring

- **IT IS FURTHER ORDERED** that, for the purpose of monitoring Settling Defendant's compliance with this Order, including any failure to transfer any assets as required by this Order and the accuracy of the financial representations upon which the judgment was suspended:
- A. Within 14 days of receipt of a written request from a representative of the Commission, Settling Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, Settling Defendant must permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, employee or any Person affiliated with Settling Defendant who has agreed to such an interview. The Person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Settling

Case 2:17-cv-02535-SMM Document 213 Filed 08/28/19 Page 13 of 13

1	Defendant or any individual or entity affiliated with Settling Defendant, without the
2	necessity of identification or prior notice. Nothing in this Order limits the Commission's
3	lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
4	§§ 49, 57b-1.
5	D. Upon written request from a representative of the Commission, any
6	consumer reporting agency must furnish consumer reports concerning Settling Defendant,
7	pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).
8	X.
9	Retention of Jurisdiction
10	IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for
11	purposes of construction, modification, and enforcement of this Order.
12	Dated this 28th day of August, 2019.
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14	Mister a manner
15	Honorable Stephen M. McNamee Senior United States District Judge
16	Semoi Officed States District Judge
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