

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

In the Matter of:

Electronic Payment Systems, LLC, a limited liability company, d/b/a EPS,

Electronic Payment Transfer, LLC, a limited liability company, d/b/a EPS,

John Dorsey, individually and as an officer of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC, and

Thomas McCann, individually and as an officer of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC.

File No. 1523213

Agreement Containing Consent Order

The Federal Trade Commission (“Commission”) has conducted an investigation of certain acts and practices of Electronic Payment Systems, LLC, Electronic Payment Transfer LLC, and John Dorsey and Thomas McCann, individually and as officers of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC (collectively “Proposed Respondents”). The Commission’s Bureau of Consumer Protection (“BCP”) has prepared a draft of an administrative Complaint (“draft Complaint”). BCP and Proposed Respondents, individually and through their duly authorized officers enter into this Agreement Containing Consent Order (“Consent Agreement”) to resolve the allegations in the attached draft Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

It is hereby agreed by and between Proposed Respondents and BCP, that:

1. The Proposed Respondents are:
 - a) Proposed Respondent Electronic Payment Systems, LLC, also doing business as EPS, a Colorado limited liability company

with its principal office or place of business at 6472 S. Quebec St., Englewood, CO 80111.

- b) Proposed Respondent Electronic Payment Transfer, LLC, also doing business as EPS, a Colorado limited liability company with its principal office or place of business at 6472 S. Quebec St., Englewood, CO 80111.
- c) Proposed Respondent John Dorsey, an officer of the Proposed Corporate Respondents, Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC. His principal office or place of business is the same as that of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC.
- d) Proposed Respondent Thomas McCann, an officer of the Proposed Corporate Respondents, Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC. His principal office or place of business is the same as that of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC.

2. Proposed Respondents neither admit nor deny any of the allegations in the Complaint, except as specifically stated in the Decision and Order. Only for purposes of this action, Proposed Respondents admit the facts necessary to establish jurisdiction.

3. Proposed Respondents waive:

- a) Any further procedural steps;
- b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law; and
- c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order issued pursuant to this Consent Agreement.

4. This Consent Agreement will not become part of the public record of the proceeding unless and until it is accepted by the Commission. If the Commission accepts this Consent Agreement, it, together with the draft Complaint, will be placed on the public record for 30 days and information about them publicly released. Acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter. Thereafter, the Commission may

either withdraw its acceptance of this Consent Agreement and so notify each Proposed Respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding, which may include an Order. *See* Section 2.34 of the Commission's Rules, 16 C.F.R. § 2.34 ("Rule 2.34").

5. If this agreement is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to Rule 2.34, the Commission may, without further notice to Proposed Respondents: (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and its Decision and Order; and (2) make information about them public. Proposed Respondents agree that service of the Order may be effected by its publication on the Commission's website (ftc.gov), at which time the Order will become final. *See* Rule 2.32(d). Proposed Respondents waive any rights they may have to any other manner of service. *See* Rule 4.4.

6. When final, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Commission orders.

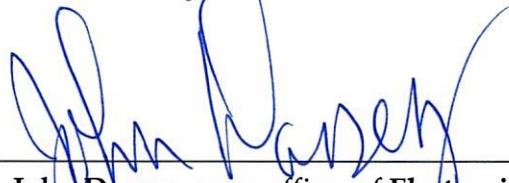
7. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in this Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

8. Each Proposed Respondent agrees to comply with the terms of the proposed Decision and Order. Proposed Respondents understand that they may be liable for civil penalties and other relief for each violation of the Decision and Order after it becomes final.

**Electronic Payment Systems, LLC and
Electronic Payment Transfer, LLC:**

Dated: 12-21-21

By:



**John Dorsey, as an officer of Electronic
Payment Systems, LLC and Electronic
Payment Transfer, LLC**

Dated:

By:

**Thomas McCann, as an officer of
Electronic Payment Systems, LLC and
Electronic Payment Transfer, LLC**

Dated:

Scotty P. Krob

Matthew Z. Krob

Krob Law Office LLC

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Attorneys for Respondents Electronic
Payment Systems, LLC and Electronic
Payment Transfer, LLC

**Electronic Payment Systems, LLC and
Electronic Payment Transfer, LLC:**

Dated:

By: _____

**John Dorsey, as an officer of Electronic
Payment Systems, LLC and Electronic
Payment Transfer, LLC**

Dated: January 7, 2022

By: _____

**Thomas McCann, as an officer of
Electronic Payment Systems, LLC and
Electronic Payment Transfer, LLC**

Dated: January 7, 2022

Scotty P. Krob

Matthew Z. Krob

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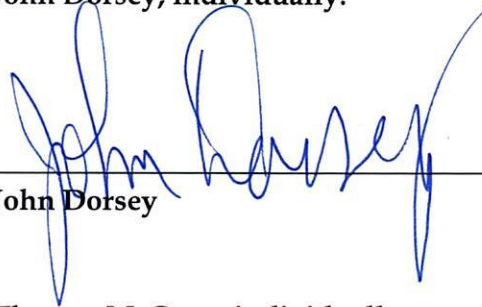
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Attorneys for Respondents Electronic
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Payment Transfer, LLC

John Dorsey, individually:

Dated: 12-21-21



John Dorsey

Thomas McCann, individually:

Dated:

Thomas McCann

Dated:

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Attorneys for Respondents
John Dorsey and Thomas McCann


John Dorsey, individually:

Dated:

John Dorsey

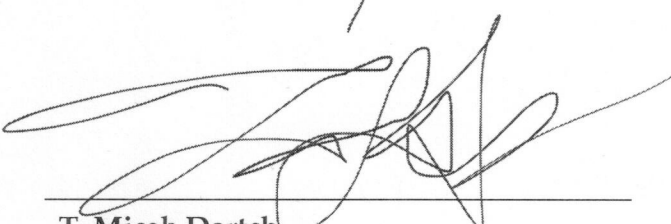
Thomas McCann, individually:

Dated: January 7, 2022



Thomas McCann

Dated: January 7, 2022



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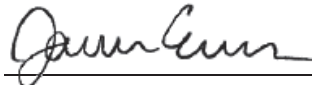
Attorneys for Respondents
John Dorsey and Thomas McCann

Federal Trade Commission



Dated: January 18, 2022

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Federal Trade Commission

Approved:



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Bureau of Consumer Protection

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of:

Electronic Payment Systems, LLC, a
limited liability company, d/b/a EPS,

Electronic Payment Transfer, LLC, a
limited liability company, d/b/a EPS,

John Dorsey, individually and as an
officer of Electronic Payment Systems,
LLC and Electronic Payment Transfer,
LLC, and

Thomas McCann, individually and as
an officer of Electronic Payment
Systems, LLC and Electronic Payment
Transfer, LLC.

Decision and Order

Docket No. C-___

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Federal Trade Commission Act.

Respondents and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:
 - a) Respondent Electronic Payment Systems, LLC, also doing business as EPS, a Colorado limited liability company with its principal office or place of business at 6472 S. Quebec St., Englewood, CO 80111.
 - b) Respondent Electronic Payment Transfer, LLC, also doing business as EPS, a Colorado limited liability company with its principal office or place of business at 6472 S. Quebec St., Englewood, CO 80111.
 - c) Respondent John Dorsey, an officer of the Proposed Corporate Respondents, Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC. His principal office or place of business is the same as that of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC.
 - d) Respondent Thomas McCann, an officer of the Proposed Corporate Respondents, Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC. His principal office or place of business is the same as that of Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC.

2. The Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

Definitions

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

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 (e.g. VISA, Inc., MasterCard, Inc., American Express Company, and Discover Financial Services, Inc.) to authorize Merchants to accept, transmit, or process payment by credit card through the credit card system for money, products or services, or anything else of value. The EPS Respondents are not considered to be Acquirers.

2. “Additional Review Merchant” means any Merchant that:

- a) Engages in Outbound Telemarketing; or
- b) Offers to sell, sells, promotes, or markets any of the following products or services by any means: debt collection, debt relief, consumer credit related services, rental housing listings, job listings or Money Making Opportunities.

3. “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 other Financial Institution.

4. “Chargeback Rate” means the proportion (expressed as a percentage) of Chargebacks out of the total number of attempted credit or debit card sales transactions.

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. "EPS Merchant" means any Person:

- a) Who obtains, directly or indirectly, from any EPS Respondent a Merchant Account; or
- b) To whom any EPS Respondent provides, directly or indirectly, Payment Processing services.

8. "Financial Institution" means any institution engaged in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)). An institution that is significantly engaged in financial activities is a Financial Institution.

9. "Fraud Monitoring" or "Risk Monitoring Program" means any program established to monitor or detect potentially fraudulent, illegal, or unauthorized Merchant transactions and activity by a credit card association (e.g., VISA, MasterCard, American Express, Discover), Acquirer, Financial Institution, or operator of a payment system. Such programs include any program established to monitor Chargebacks (including VISA's Merchant Chargeback Monitoring Program) or Chargeback Rates, reasons provided for Chargeback transactions (e.g., VISA's Merchant Chargeback Monitoring Program), fraudulent or unauthorized transactions (e.g., MasterCard's "GMAP Program," VISA's Risk Identification Service program), and Merchants classified or defined by VISA as high risk Merchants (however titled), including VISA's "High Brand Risk Merchant" program, as periodically revised or updated from time to time.

10. “Independent Sales Organization” or “ISO” means any Person 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 or refers Merchants to a Payment Processor or Acquirer for Payment Processing services, or that matches 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.
11. “Merchant” means any Person engaged in the sale or marketing of any products or services or a charitable contribution, including any Person who applies for Payment Processing services.
12. “Merchant Account” means any account with an Acquirer or other Financial Institution, service provider, Payment Processor, ISO, or other entity that enables an individual, a business, or other organization to accept credit card, debit card, or check payments of any kind.
13. “Money Making Opportunity” means a business model in which a Merchant offers to sell, sells, promotes, or markets any product or service represented to enable consumers or to assist consumers in:
- a) Earning income through a work-from-home business opportunity;
 - b) Obtaining training or education on how to establish a business or earn money or other consideration through a business;
 - c) Obtaining employment for an upfront fee; or
 - d) Obtaining government grants or other government income, benefits, or scholarships.

The term “Money Making Opportunity” does not include services provided by a school or program of instruction that has been evaluated and found to meet established criteria by an accrediting agency or association recognized for such purposes by the U.S. Department of Education.

14. “Outbound Telemarketing” means any plan, program, or campaign that is conducted to induce the purchase of products or services by use of one or more telephones, and which involves a telephone call initiated by a Person other than the consumer.

15. “Payment Processing” means transmitting sales transaction data on behalf of a Merchant or 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 credit cards, debit cards, prepaid cards, and stored value cards. 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) Transmitting sales transaction data or providing the means to transmit sales transaction data from Merchants to Acquirers, Payment Processors, ISOs, or other Financial Institutions;
- c) Clearing, settling, or distributing proceeds of sales transactions from Acquirers or Financial Institutions to Merchants; or
- d) Processing Chargebacks.

16. “Payment Processor” means any Person providing Payment Processing services in connection with another Person’s sale of products or services, or in connection with any charitable donation.

17. “Person” means any natural person, or any entity, corporation, partnership, or association of Persons.

18. “Respondents” means all of the Corporate Respondents and the Individual Respondents, individually, collectively, or in any combination.

- a) “Corporate Respondents” means Electronic Payment Systems, LLC and Electronic Payment Transfer, LLC, both also doing business as EPS, and their successors and assigns.
- b) “Individual Respondents” means John Dorsey and Thomas McCann.

19. "Sales Agent" means a Person that:
- a) Enters into an agreement or contract with an ISO to sell or market Payment Processing services to a Merchant; or
 - b) Matches or refers Merchants to an ISO for Payment Processing services, or that matches or refers an ISO to Merchants for Payment Processing Services.

As such, a Sales Agent may be involved in recommending a particular ISO to a Merchant, forwarding to the ISO a Merchant's application, or negotiating rates and fees charged by an ISO.

Provisions

I.

Prohibitions Against Deceptive or Unfair Payment Processing Acts or Practices

It is ordered that Respondents, and Respondents' officers, agents, and employees, and those other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with offering Payment Processing services, must not:

- A. Engage in Credit Card Laundering;
- B. Engage in tactics to evade any Fraud Monitoring or Risk Monitoring Program, including:
 - 1) Making, or assisting others in making any false or misleading statement, or providing any false document, in order to obtain a Merchant Account or Payment Processing services;
 - 2) Opening multiple Merchant Accounts in the names of other companies for the same underlying Merchant, in order to conceal the Merchant's true identity;
 - 3) Processing a Merchant's credit card transactions through multiple Merchant Accounts opened in the names of other companies, in order to artificially alter the true volume of transactions processed through any single Merchant Account;

- 4) Misrepresenting whether a Merchant is engaged in Outbound Telemarketing; and
- 5) Using or providing a bank account set up for the purpose of receiving only the returned transactions of any payment instrument (including checks and credit card transactions), in order to conceal Chargeback levels of Merchant transactions deposited into a different bank account;

C. Provide Payment Processing services to any Merchant that is engaged in any act or practice that is, or is likely to be, deceptive or unfair, including:

- 1) The unauthorized charging of consumer credit card accounts or the unauthorized debiting of consumer bank accounts;
- 2) The misrepresentation, directly or by implication, of the total costs to purchase, receive, or use any product or service; any material aspect of the performance, efficacy, nature, or central characteristics of the product or service; and any material aspect of the nature of the Merchant's refund, cancellation, exchange, or repurchase policies;
- 3) The failure to disclose, clearly and conspicuously, the total cost to purchase, receive or use any product or service;
- 4) Any tactics to conceal the true identity of the Merchant, including the use of shell companies or fictitious company names to conduct business, in order to gain access to a payment network, apply for Payment Processing services, or apply for Merchant Accounts;
- 5) Any tactics to evade any Fraud Monitoring or Risk Monitoring Program, including: distributing sales transaction volume among multiple Merchant Accounts or splitting a single sales transaction into multiple smaller transactions, in order to conceal a Merchant's identity or to artificially alter the true volume of transactions processed through any single Merchant Account;
- 6) Making any false or misleading statement, or providing any false document, in order to obtain a Merchant Account or Payment Processing services; and

- 7) Misrepresenting the type of business engaged in by the Merchant, or the means of advertising, marketing, and sales used by the Merchant (i.e., whether the Merchant is engaged in Outbound Telemarketing); and

D. Provide Payment Processing services or acting as an ISO or Sales Agent for any Merchant that is listed on the MasterCard Member Alert to Control High-Risk Merchants (MATCH) list for any of the following reasons:

- 1) Excessive chargebacks,
- 2) Fraud,
- 3) Identification as a Questionable Merchant per the MasterCard Questionable Merchant Audit Program,
- 4) Merchant collusion,
- 5) Illegal transactions,
- 6) Credit Card Laundering, or
- 7) Identity theft.

II.

Screening of Additional Review Merchants

It is further ordered that Respondent, and Respondents' officers, agents, and employees, and those other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with offering Payment Processing services, must engage in reasonable screening of Additional Review Merchants to confirm each Additional Review Merchant's identity, and to determine whether each Additional Review Merchant's business practices are, or are likely to be, deceptive or unfair.

Such reasonable screening must include:

- A. Establishing and maintaining policies and procedures designed to identify Merchants that qualify as Additional Review Merchants;

- B. Obtaining from each Additional Review Merchant:
- 1) A description of the nature of the Additional Review Merchant's business, including the nature of the products and services for which the Additional Review Merchant seeks Payment Processing services, and a description of the means of advertising, marketing, and sales used (i.e., Outbound Telemarketing, Internet sales);
 - 2) The name(s) of the principal(s) and controlling Person(s) of the entity, and of Person(s) with a twenty-five percent (25%) or greater ownership interest in the entity;
 - 3) A list of all business names, trade names, aliases or fictitious names, DBAs, websites, and identification numbers (such as taxpayer ID numbers) under or through which the Additional Review Merchant is marketing or intends to market the products and services for which the Additional Review Merchant seeks Payment Processing services;
 - 4) Each physical address at which the Additional Review Merchant conducts business or will conduct the business(es) identified pursuant to subsection (1) of this Section II.B;
 - 5) A list of all postal addresses, email addresses, telephone numbers, and Internet addresses the Additional Review Merchant uses or will use to conduct the business(es) identified pursuant to subsection (1) of this Section II.B;
 - 6) For each product or service for which the Additional Review Merchant seeks Payment Processing services, the bank account number and name of the account holder(s) for each depository bank account currently held by the Additional Review Merchant and into which the Additional Review Merchant's sales revenues are to be deposited, and the name of the bank(s) at which each such depository bank account is maintained;
 - 7) The percentage of the Additional Review Merchant's sales transactions, for which the Additional Review Merchant seeks Payment Processing services, that qualify as "Card Not Present Transactions," and a detailed breakdown of the Additional Review Merchant's different types of "Card Not Present

Transactions” (i.e., Internet or ecommerce sales, Outbound Telemarketing);

- 8) Representative samples of all types of current marketing materials, including, but not limited to screen prints of relevant web pages and public social media pages, for the products or services for which the Additional Review Merchant seeks Payment Processing services;
- 9) Copies of all fulfillment agreements, if the Additional Review Merchant utilizes third party fulfillment providers;
- 10) Information regarding whether the Additional Review Merchant, including the principal(s) and controlling Person(s) of the Additional Review Merchant entity, any Person(s) who has a twenty-five percent (25%) or greater ownership interest in the entity, and any corporate name, trade name, fictitious name or aliases under which such Person(s) conduct or has conducted business, has ever been:
 - a) Placed in any Fraud Monitoring or Risk Monitoring Program;
 - b) Listed on the MasterCard Member Alert to Control High-Risk Merchants (“MATCH”) list;
 - c) Placed in a payment card association’s chargeback monitoring program; or
 - d) The subject of legal action taken by the Commission or any other state or federal law enforcement agency;
- 11) Copies of monthly or periodic Payment Processing statements issued by each bank, Acquirer, Payment Processor, ISO, or Sales Agent used by the Additional Review Merchant during the preceding three (3) months, to the extent the Additional Review Merchant used Payment Processing services in the preceding three (3) months; and
- 12) The Additional Review Merchant’s past Chargeback Rates for the preceding three (3) months, to the extent the Additional

Review Merchant used Payment Processing services in the preceding three (3) months;

C. Taking reasonable steps to assess the accuracy of the information provided pursuant to Section II.B of this Order, and to confirm the identity of the Additional Review Merchant, including:

- 1) Subject to any limitations put in place by the Financial Institution that carries the account, confirming the Additional Review Merchant's depository bank account(s), including requesting and reviewing bank reference or bank verification letters;
- 2) Cross-referencing the following information relating to the Additional Review Merchant with similar information associated with other Merchants in Respondent Electronic Payment Systems' current Merchant portfolio, in order to determine whether the Additional Review Merchant has concealed or attempted to conceal its true identity, or is related to or associated with any other Merchant in Electronic Payment Systems' current Merchant portfolio or any other Merchant previously approved by Electronic Payment Systems that was referred by the same Sales Agent:
 - a) The Additional Review Merchant's business names, trade names, aliases or fictitious names, DBAs, and identification numbers (such as taxpayer identification numbers);
 - b) The Additional Review Merchant's physical addresses, postal addresses, email addresses, Internet addresses, websites, telephone numbers, and bank accounts; and
 - c) The names of the principal(s) and controlling Person(s) of the Additional Review Merchant, and of Person(s) with a twenty-five percent (25%) or greater ownership interest in the Additional Review Merchant;
- 3) Reviewing copies of monthly or periodic Payment Processing statements issued by any bank, Acquirer, Payment Processor, ISO, or Sales Agent used by the Additional Review Merchant during the preceding three (3) months;

- 4) Reviewing representative samples of all current marketing materials, including, but not limited to screen prints of relevant web pages and public social media pages, and all fulfillment agreements provided by the Additional Review Merchant, for the products or services for which the Additional Review Merchant seeks Payment Processing services;
- 5) Reviewing credit reports of the Additional Review Merchant and Person(s) with a twenty-five percent (25%) or greater ownership interest in the entity; and
- 6) Reviewing background information regarding the Additional Review Merchant, its principal(s) and controlling Person(s) of the entity, and of Person(s) with a twenty-five percent (25%) or greater ownership interest in the entity.

D. The purpose of the reasonable screening process described in Section II.A through C is to:

- 1) Confirm that the Additional Review Merchant is engaged in offering the products and services, and using the means of advertising, marketing, and sales, that are described in its application for Payment Processing services;
- 2) Determine whether the Additional Review Merchant has attempted to conceal its true identity, and is likely engaged in Credit Card Laundering;
- 3) Determine whether the Additional Review Merchant's past transactions exhibit any unusual or suspicious transaction patterns, trends, values, and volume, including processing for time periods of less than three months or processing only during alternating months, for no apparent legitimate business reason or lawful purpose;
- 4) Determine whether the Additional Review Merchant has likely engaged in tactics to evade any Fraud Monitoring or Risk Monitoring Program, including opening and processing through multiple Merchant Accounts in order to artificially alter its true total volume of sales transactions or Chargebacks processed through any one single Merchant Account, or for no apparent legitimate business reason or lawful purpose;

- 5) Determine whether the Additional Review Merchant is engaged in any of the following unfair or deceptive acts or practices:
 - a) Failing to clearly and conspicuously disclose the total cost to purchase, receive, or use, any products or services;
 - b) Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of products or services;
 - c) Failing to clearly and conspicuously disclose all material terms and conditions of an offer;
 - d) Misrepresenting, expressly or by implication, any material aspect of the Additional Review Merchant's refund, cancellation, exchange, or repurchase policies; and
 - e) Causing billing information to be submitted for payment without the customer's express authorization.

III.

Monitoring of Additional Review Merchants

It is further ordered that Respondent, and Respondent's officers, agents, and employees, and those other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with offering Payment Processing services, must:

A. Monitor the sales activity of all current EPS Merchants to identify EPS Merchants that should be designated as Additional Review Merchants requiring additional screening pursuant to Section II of this Order, and for those EPS Merchants that become designated as Additional Review Merchants, complete the additional screening process described in Section II of this Order within 10 days of the date the EPS Merchant is determined to be an Additional Review Merchant;

B. Monitor each Additional Review Merchant's marketing practices and sales transactions to determine whether the Additional Review Merchant is engaged in practices that are deceptive or unfair in violation of Section 5 of the FTC Act. Such

monitoring must include reviewing Additional Review Merchants' websites; reviewing each Additional Review Merchant's Chargeback Rates and reasons provided for these rates, as well as examining any unusual or suspect transaction patterns, values, and volume; reviewing each Additional Review Merchant's consumer complaints related to requests for Chargebacks and complaints found on publicly available complaint mediums (i.e., online consumer complaint boards), or received from any third party, including Financial Institutions, credit card associations, Better Business Bureaus, and operators of payment systems;

C. Monitor each Additional Review Merchant's accounts to detect indicia that the Additional Review Merchant is engaged in Credit Card Laundering, tactics to conceal its true identity, or tactics to evade any Fraud Monitoring or Risk Monitoring Program. Such indicia include:

- 1) Unusual or suspicious transactions, patterns, trends, values, and volume;
- 2) Opening and closing multiple Merchant Accounts for the same underlying Merchant under different business names, for no apparent legitimate business or lawful purpose;
- 3) Payment Processing of transactions through Merchant Accounts for time periods of less than three months, or during only alternating months, for no apparent legitimate business or lawful purpose;
- 4) Distributing sales transaction volume across multiple Merchant Accounts of any payment system; and
- 5) Using an incorrect Merchant Category Code;

D. Calculate and update the Chargeback Rate at least on a monthly basis for each Additional Review Merchant. The Chargeback Rate must be calculated separately for each payment mechanism processed, including credit and debit card transactions. For any Additional Review Merchant with multiple Merchant Accounts, the calculation of the Chargeback Rate must be made for each of the Additional Review Merchant's individual accounts, and in the aggregate for each Additional Review Merchant;

E. Immediately conduct a reasonable investigation of the cause of Chargeback Rates for any Additional Review Merchant whose monthly Chargeback

Rate exceeds one percent (1%) and whose total number of Chargebacks exceeds fifty-five (55) per month in any two of the past six months, as follows:

- 1) Updating the information gathered in compliance with Section II of this Order, as applicable, and any other advertising of the Additional Review Merchant, and confirming the accuracy thereof;
- 2) Confirming that the Additional Review Merchant has obtained required consumer authorizations for the transactions;
- 3) Reviewing the consumer complaints and reasons provided for all Chargeback transactions;
- 4) If contact information is available, contacting consumers, Financial Institutions, and Better Business Bureaus to gather detailed information, including complaints and other relevant information, regarding the Additional Review Merchant;
- 5) Reviewing websites used by the Additional Review Merchant to market its products and services;
- 6) Searching publicly available sources for consumer complaints against the Additional Review Merchant alleging fraud (including online consumer complaint boards), and for legal actions against the Additional Review Merchant undertaken by the Commission or other state or federal law enforcement agencies;
- 7) Conducting "test" shopping to determine the Additional Review Merchant's sales practices, where possible; and
- 8) Stopping the processing of sales transactions and closing all processing accounts for any Additional Review Merchant investigated pursuant to this Subsection III.E within 30 days of commencing the investigation, unless the EPS Respondents draft a written report establishing facts that demonstrate that the Additional Review Merchant's business practices are not deceptive or unfair in violation of Section 5 of the FTC Act and are not in violation of the Telemarketing Sales Rule.

F. Immediately stop processing sales transactions and close all Merchant Accounts for any Additional Review Merchant that the EPS Respondents know or should know is engaged in Credit Card Laundering, tactics to conceal its true identity, or tactics to evade any Fraud Monitoring or Risk Monitoring Program, including balancing or distributing sales transaction volume or sales transaction activity among multiple Merchant Accounts or merchant billing descriptors; splitting a single sales transaction into multiple transactions, or using shell companies to apply for additional Merchant Accounts.

Nothing in this Section III should be read to insulate the EPS Respondents from liability for a violation of Section 5 of the FTC Act, the TSR, or any provision of this Order.

IV. **Monitoring of Sales Agents and Termination of Sales Agents Engaged in Certain Practices**

It is further ordered that Respondents, and Respondents' officers, agents, and employees, and those other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with offering Payment Processing services, in connection with offering or providing Payment Processing services, must:

A. Monitor each Sales Agent's past referral of Merchants and existing Merchant portfolio to determine whether any Merchant referred by the Sales Agent has engaged in tactics to conceal its true identity or is related to or associated with any other Merchant previously referred to any EPS Respondent by the same Sales Agent;

B. Immediately terminate the EPS Respondents' relationship with any Sales Agent as soon as practicable and in no more than 3 days, for any Sales Agent that any EPS Respondent knows or should know:

- 1) Has provided false information or false documents to apply for Payment Processing services or a Merchant Account for any Merchant, that the Sales Agent knew or should have known was false;
- 2) Has referred Merchants to any EPS Respondent that the Sales Agent knew or should have known were concealing their true

identities, or are engaged in or have been engaged in deceptive or unfair sales practices;

- 3) Has engaged in Credit Card Laundering or any tactics to evade any Fraud Monitoring or Risk Monitoring Program; or
- 4) Is or has been engaged in deceptive or unfair sales practices.

V.

Acknowledgments of the Order

It is further ordered that Respondents obtain acknowledgments of receipt of this Order:

A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after the issuance date of this Order, each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, unless such business cannot violate the Order, and each Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (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 Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date 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 a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VI.
Compliance Reports and Notices

It is further ordered that Respondents make timely submissions to the Commission:

A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:

- 1) Each Respondent must: (a) 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 Respondent; (b) identify all of that Respondent's businesses that could violate the Order by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondents must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

- 2) Additionally, each Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including addresses used for any business; (b) identify all his business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

- 1) Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Respondent or any entity that Respondent 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.
- 2) Additionally, each Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.

C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent 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: *In re Electronic Payment Systems, LLC*, matter number 1523213.

VII. Recordkeeping

It is further ordered that Respondents must create or receive, as applicable, certain records for 10 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, Corporate Respondents in connection with offering or providing Payment Processing services, and each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all products or services sold that are related to the subject matter of the Order;
- B. Personnel records showing, for each person providing services in relation to any aspect of the Order, 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 EPS Merchant files and transactions, including Merchant Applications, underwriting documents, screening and monitoring records, investigation records and reports, bank verification records, processed transactions, and Chargeback transactions;
- D. Records of all consumer complaints concerning the subject matter of the Order, including Chargeback requests, Chargeback dispute documentation, and refund requests with respect to EPS Merchants, whether received directly or indirectly, such as through a third party, and any response; and
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VIII. Compliance Monitoring

It is further ordered that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee 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 Respondents or any individual or entity affiliated with Respondents, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Respondents, pursuant to Section 604(2) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(2).

IX. Order Effective Dates

It is further ordered that that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this Provision as though the complaint had never been filed, except that

the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

April J. Tabor
Secretary

Seal:

Issued: