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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 and Defendants Electronic Payment Solutions of America Inc. and Electronic Payment Services Inc.’s Joint Motion for Entry of Stipulated Orders for Permanent Injunction and Judgment. (Doc. 339.)

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. §§ 6101–08. The FTC and Defendants Electronic Payment Solutions of America Inc. and Electronic Payment Services Inc. (“Settling Defendants”) stipulate to the entry of this Order (“Order”) to resolve all matters in dispute in this action between them.

After review and consideration, and pursuant to the parties’ stipulation,  
**IT IS HEREBY ORDERED granting** Plaintiff Federal Trade Commission and Defendants Electronic Payment Solutions of America Inc. and Electronic Payment

1 Services Inc.’s Joint Motion for Entry of Stipulated Orders for Permanent Injunction and  
2 Judgment (Doc. 339), regarding Defendants Electronic Payment Solutions of America Inc.  
3 and Electronic Payment Services Inc., only.

4 **IT IS FURTHER ORDERED directing** the Clerk of the Court to terminate  
5 Defendants Electronic Payment Solutions of America Inc. and Electronic Payment  
6 Services Inc., only. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the  
7 Court finds no reason for just delay.

8 **IT IS FURTHER ORDERED** as follows:

9 **FINDINGS**

10 1. This Court has jurisdiction over this matter.

11 2. The First Amended Complaint charges that Settling Defendants participated  
12 in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.  
13 § 45, and the FTC’s Trade Regulation Rule entitled Telemarketing Sales Rule (“TSR” or  
14 “Rule”), 16 C.F.R. Part 310, by their involvement in a credit card laundering scheme in  
15 which the defendants named in the Complaint opened and established Merchant Accounts  
16 for fictitious companies that were used to process credit card sales transactions for other  
17 entities.

18 3. Settling Defendants neither admit nor deny any of the allegations in the  
19 Complaint, except as specifically stated in this Order. Only for purposes of this action,  
20 Settling Defendants admit the facts necessary to establish jurisdiction.

21 4. Settling Defendants waive any claim that they may have under the Equal  
22 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through  
23 the date of this Order, and agree to bear their own costs and attorney’s fees.

24 5. Settling Defendants waive all rights to appeal or otherwise challenge or  
25 contest the validity of this Order.

26 **DEFINITIONS**

27 For the purpose of this Order, the following definitions apply:  
28

1           1.       **“ACH Debit”** means any completed or attempted debit to a Person’s account  
2 at a Financial Institution that is processed electronically through the Automated Clearing  
3 House Network (“ACH Network”).

4           2.       **“Acquirer”** means a business organization, Financial Institution, or an agent  
5 of a business organization or Financial Institution that has authority from an organization  
6 that operates or licenses a credit card system (e.g. VISA, Inc., MasterCard, Inc., American  
7 Express Company, and Discover Financial Services, Inc.) to authorize Merchants to accept,  
8 transmit, or process payment by credit card through the credit card system for money, goods  
9 or services, or anything else of value.

10          3.       **“Chargeback”** means a procedure whereby an issuing bank or other  
11 Financial Institution charges all or part of an amount of a Person’s credit or debit card  
12 transaction back to the Acquirer or other Financial Institution.

13          4.       **“Credit Card Laundering”** means:

- 14                   a)       Presenting or depositing into, or causing or allowing another to  
15                                present or deposit into, the credit card system for payment, a Credit  
16                                Card Sales Draft generated by a transaction that is not the result of a  
17                                credit card transaction between the cardholder and the Merchant;  
18                   b)       Employing, soliciting, or otherwise causing or allowing a Merchant,  
19                                or an employee, representative, or agent of a Merchant, to present to  
20                                or deposit into the credit card system for payment, a Credit Card Sales  
21                                Draft generated by a transaction that is not the result of a credit card  
22                                transaction between the cardholder and the Merchant; or  
23                   c)       Obtaining access to the credit card system through the use of a  
24                                business relationship or an affiliation with a Merchant, when such  
25                                access is not authorized by the Merchant Account agreement or the  
26                                applicable credit card system.

27          5.       **“Credit Card Sales Draft”** means any record or evidence of a credit card  
28 transaction.

1           6.     **“Financial Institution”** means any institution whose business is engaging in  
2 financial activities as described in section 4(k) of the Bank Holding Company Act of 1956  
3 (12 U.S.C. § 1843(k)), a copy of which is attached as Attachment A. An institution that is  
4 significantly engaged in financial activities is a Financial Institution.

5           7.     **“Independent Sales Organization”** or **“ISO”** means any Person that:

- 6           a)     Enters into an agreement or contract with a Payment Processor,  
7                   Acquirer or Financial Institution to sell or market Payment Processing  
8                   services to a Merchant;
- 9           b)     Matches, arranges for, or refers Merchants to a Payment Processor or  
10                   Acquirer for Payment Processing services, or that matches, arranges  
11                   for, or refers a Payment Processor or Acquirer to Merchants for  
12                   Payment Processing services; or
- 13           c)     Is registered as an ISO or merchant service provider (“MSP”) with  
14                   VISA, MasterCard, or any credit card association.

15           8.     **“Merchant”** means any Person engaged in the sale or marketing of any  
16 goods or services or a charitable contribution, including any Person who applies for  
17 Payment Processing services.

18           9.     **“Merchant Account”** means any account with an Acquirer or other  
19 Financial Institution, service provider, Payment Processor, ISO, or other entity that enables  
20 an individual, a business, or other organization to accept payments of any kind.

21           10.    **“Payment Processing”** means transmitting sales transaction data on behalf  
22 of a Merchant or providing a Person, directly or indirectly, with the means used to charge  
23 or debit accounts through the use of any payment method or mechanism, including credit  
24 cards, debit cards, prepaid cards, stored value cards, ACH Debits, and Remotely Created  
25 Payment Orders. Whether accomplished through the use of software or otherwise, Payment  
26 Processing includes, among other things:

- 27           a)     Reviewing and approving Merchant applications for payment  
28                   processing services;

- 1                   b)     Transmitting sales transaction data or providing the means to transmit
- 2                   sales transaction data from Merchants to Acquirers, Payment
- 3                   Processors, ISOs, or other Financial Institutions;
- 4                   c)     Clearing, settling, or distributing proceeds of sales transactions from
- 5                   Acquirers or Financial Institutions to Merchants; or
- 6                   d)     Processing Chargebacks or returned Remotely Created Payment
- 7                   Orders or ACH Debits.

8                   11.    **“Payment Processor”** means any Person providing Payment Processing

9 services in connection with another Person’s sale of goods or services, or in connection

10 with any charitable donation.

11                  12.    **“Person”** means any natural person, organization, or legal entity, including

12 a corporation, limited liability company, partnership, proprietorship, association,

13 cooperative, government or governmental subdivision or agency, or any other group or

14 combination acting as an entity.

15                  13.    **“Remotely Created Payment Order”** or **“RCPO”** means a payment

16 instruction or order, whether created in electronic or paper format, drawn on a payor’s

17 financial account that is initiated or created by the payee, and which is deposited into or

18 cleared through the check clearing system. For purposes of this definition, an account

19 includes any financial account or credit or other arrangement that allows checks, payment

20 instructions, or orders to be drawn against it that are payable by, through, or at a bank.

21                  14.    **“Sales Agent”** means a Person that:

- 22                   a)     Enters into an agreement or contract with an ISO to sell or market
- 23                   Payment Processing services to a Merchant; or
- 24                   b)     Matches, arranges for, or refers Merchants to an ISO for Payment
- 25                   Processing services, or that matches, arranges for, or refers an ISO to
- 26                   Merchants for Payment Processing Services.

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

4 15. “**Settling Defendants**” means Electronic Payment Solutions of America  
5 Inc., Electronic Payment Services Inc., and their successors and assigns, collectively, or  
6 in any combination.

7 16. “**Telemarketing**” means any plan, program, or campaign that is conducted  
8 to induce the purchase of goods or services or a charitable contribution, by use of one or  
9 more telephones, and which involves a telephone call, whether or not covered by the  
10 Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

11 17. The words “**and**” and “**or**” will be understood to have both conjunctive and  
12 disjunctive meanings.

13 **I.**

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

15 **IT IS ORDERED** that Settling Defendants are permanently restrained and enjoined  
16 from Payment Processing or acting as an ISO or Sales Agent, whether directly or through  
17 an intermediary.

18 **II.**

19 **Prohibition Against Credit Card Laundering**

20 **IT IS FURTHER ORDERED** that Settling Defendants, their officers, agents,  
21 employees, and attorneys, and all other persons in active concert or participation with any  
22 of them, who receive actual notice of this Order, whether acting directly or indirectly, are  
23 permanently restrained and enjoined from Credit Card Laundering.

24 **III.**

25 **Ban Against Telemarketing**

26 **IT IS FURTHER ORDERED** that Settling Defendants are permanently restrained  
27 and enjoined from Telemarketing or assisting others to engage in Telemarketing, whether  
28 directly or through an intermediary.

1 **IV.**

2 **Monetary Judgment and Suspension**

3 **IT IS FURTHER ORDERED** that:

4 A. Judgment in the amount of \$4,677,935.75 (Four Million Six Hundred  
5 Seventy-Seven Thousand Nine Hundred Thirty Five Dollars and Seventy Five Cents) is  
6 entered in favor of the Commission against the Settling Defendants, jointly and severally,  
7 as equitable monetary relief.

8 B. The judgment is suspended subject to the Subsections below.

9 C. The Commission's agreement to the suspension of the judgment is expressly  
10 premised upon the truthfulness, accuracy, and completeness of Settling Defendant's sworn  
11 financial statements and related documents ("financial representations") submitted to the  
12 Commission, namely:

- 13 1) The Financial Statement of Jay Wigdore, signed by Jay Wigdore on  
14 June 16, 2020; and  
15 2) The Sworn Statement of Jay Wigdore, signed by Jay Wigdore on  
16 October 8, 2020.

17 D. The suspension of the judgments will be lifted as to any Settling Defendant  
18 if, upon motion by the Commission, the Court finds that such Defendant failed to disclose  
19 any material asset, materially misstated the value of any asset, or made any other material  
20 misstatement or omission in the financial representations identified above.

21 E. If the suspension of the judgment is lifted, the judgment becomes  
22 immediately due as to that Defendant in the amount specified in Subsection A above (which  
23 the parties stipulate only for purposes of this Section represents the consumer injury alleged  
24 in the First Amended Complaint), less any payment previously made pursuant to this  
25 Section, plus interest computed from the date of entry of this Order.

26 F. Settling Defendants relinquish dominion and all legal and equitable right,  
27 title, and interest in all assets transferred pursuant to this Order and may not seek the return  
28 of any assets.

1 G. The facts alleged in the Complaint will be taken as true, without further  
2 proof, in any subsequent civil litigation by or on behalf of the Commission in a proceeding  
3 to enforce its rights to any payment or monetary judgment pursuant to this Order, such as  
4 a nondischargeability complaint in any bankruptcy case.

5 H. The facts alleged in the Complaint establish all elements necessary to sustain  
6 an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11  
7 U.S.C. §523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

8 I. Settling Defendants acknowledge that their Taxpayer Identification Numbers  
9 (Employer Identification Numbers), which Settling Defendants have submitted to the  
10 Commission, may be used for collecting and reporting on any delinquent amount arising  
11 out of this Order, in accordance with 31 U.S.C. §7701.

12 J. All money paid to the Commission pursuant to this Order may be deposited  
13 into a fund administered by the Commission or its designee to be used for equitable relief,  
14 including consumer redress and any attendant expenses for the administration of any  
15 redress fund. If a representative of the Commission decides that direct redress to consumers  
16 is wholly or partially impracticable or money remains after redress is completed, the  
17 Commission may apply any remaining money for such other equitable relief (including  
18 consumer information remedies) as it determines to be reasonably related to Defendants'  
19 practices alleged in the Complaint. Any money not used for such equitable relief is to be  
20 deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any  
21 actions the Commission or its representatives may take pursuant to this Subsection.

22 **V.**

23 **Customer Information**

24 **IT IS FURTHER ORDERED** that Settling Defendants, their officers, agents,  
25 employees, and attorneys, and all other persons in active concert or participation with any  
26 of them, who receive actual notice of this Order, whether acting directly or indirectly, are  
27 permanently restrained and enjoined from:  
28







1                   5) Provide a copy of each Order Acknowledgement obtained pursuant to this  
2                   Order, unless previously submitted to the Commission;

3           B.     For 10 years after entry of this Order, each Settling Defendant must submit a  
4 compliance notice, sworn under penalty of perjury, within 14 days of any change in the  
5 following:

- 6                   1)     Any designated point of contact; or  
7                   2)     The structure of any Settling Defendant or any entity that Settling has  
8 any ownership interest in or controls directly or indirectly that may  
9 affect compliance obligations arising under this Order, including:  
10 creation, merger, sale, or dissolution of the entity or any subsidiary,  
11 parent, or affiliate that engages in any acts or practices subject to this  
12 Order.

13           C.     Each Settling Defendant must submit to the Commission notice of the filing  
14 of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such  
15 Defendant within 14 days of its filing.

16           D.     Any submission to the Commission required by this Order to be sworn under  
17 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as  
18 by concluding: “I declare under penalty of perjury under the laws of the United States of  
19 America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date,  
20 signatory’s full name, title (if applicable), and signature.

21           E.     Unless otherwise directed by a Commission representative in writing, all  
22 submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov  
23 or sent by overnight courier (not the U.S. Postal Service) to:

24                   Associate Director for Enforcement  
25                   Bureau of Consumer Protection  
26                   Federal Trade Commission  
27                   600 Pennsylvania Avenue NW  
28                   Washington, DC 20580

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

3 **IX.**

4 **Recordkeeping**

5 **IT IS FURTHER ORDERED** that Settling Defendants must create certain records  
6 for 10 years after entry of the Order, and retain each such record for 5 years. Specifically,  
7 Settling Defendants for any business that either of them, individually or collectively with  
8 any other defendant, is a majority owner or controls directly or indirectly, must create and  
9 maintain the following records:

10 A. Accounting records showing the revenues from all goods or services sold;

11 B. Personnel records showing, for each Person providing services, whether as  
12 an employee or otherwise, that Person's: name, addresses, telephone numbers; job title or  
13 position; dates of service; and, if applicable, the reason for termination;

14 C. Records of all consumer complaints, Chargeback requests and Chargeback  
15 dispute documentation, and refund requests, whether received directly or indirectly, such  
16 as through a third party, and any response;

17 D. All records necessary to demonstrate full compliance with each provision of  
18 this Order, including all submissions to the Commission;

19 E. Copies of representative samples of each unique advertisement or other  
20 marketing material.

21 **X.**

22 **Compliance Monitoring**

23 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Settling  
24 Defendants' compliance with this Order, including the financial representations upon  
25 which part of the judgment was suspended and any failure to transfer any assets as required  
26 by this Order:

27 A. Within 14 days of receipt of a written request from a representative of the  
28 Commission, each Settling Defendant must: submit additional compliance reports or other

1 requested information, which must be sworn under penalty of perjury; appear for  
2 depositions; and produce documents for inspection and copying. The Commission is also  
3 authorized to obtain discovery, without further leave of court, using any of the procedures  
4 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),  
5 31, 33, 34, 36, 45, and 69.

6 B. For matters concerning this Order, the Commission is authorized to  
7 communicate directly with Settling Defendants. Settling Defendants must permit  
8 representatives of the Commission to interview any employee or other Person affiliated  
9 with any Settling Defendant who has agreed to such an interview. The Person interviewed  
10 may have counsel present.


11 C. The Commission may use all other lawful means, including posing, through  
12 its representatives as consumers, suppliers, or other individuals or entities, to Settling  
13 Defendants or any individual or entity affiliated with Settling Defendants, without the  
14 necessity of identification or prior notice. Nothing in this Order limits the Commission's  
15 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.  
16 §§ 49, 57b-1.

17 **XI.**

18 **Retention of Jurisdiction**

19 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter  
20 for purposes of construction, modification, and enforcement of this Order.

21 Dated this 22nd day of January, 2021.

22  
23  
24   
25 Honorable Stephen M. McNamee  
26 Senior United States District Judge  
27  
28