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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 Defendant Jay Wigdore’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 Defendant Jay Wigdore (“Settling Defendant”) 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 Defendant Jay Wigdore’s Joint Motion for Entry of Stipulated Orders for Permanent Injunction and Judgment (Doc. 339), regarding Defendant Jay Wigdore, only.

1 that operates or licenses a credit card system (e.g. VISA, Inc., MasterCard, Inc., American
2 Express Company, and Discover Financial Services, Inc.) to authorize Merchants to accept,
3 transmit, or process payment by credit card through the credit card system for money, goods
4 or services, or anything else of value.

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

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

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

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

24 6. **“Financial Institution”** means any institution whose business is engaging in
25 financial activities as described in section 4(k) of the Bank Holding Company Act of 1956
26 (12 U.S.C. § 1843(k)), a copy of which is attached as Attachment A. An institution that is
27 significantly engaged in financial activities is a Financial Institution.

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

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

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

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

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

- 22 a) Reviewing and approving Merchant applications for payment
23 processing services;
- 24 b) Transmitting sales transaction data or providing the means to transmit
25 sales transaction data from Merchants to Acquirers, Payment
26 Processors, ISOs, or other Financial Institutions;
- 27 c) Clearing, settling, or distributing proceeds of sales transactions from
28 Acquirers or Financial Institutions to Merchants; or

1 d) Processing Chargebacks or returned Remotely Created Payment
2 Orders or ACH Debits.

3 11. **“Payment Processor”** means any Person providing Payment Processing
4 services in connection with another Person’s sale of goods or services, or in connection
5 with any charitable donation.

6 12. **“Person”** means any natural person, organization, or legal entity, including
7 a corporation, limited liability company, partnership, proprietorship, association,
8 cooperative, government or governmental subdivision or agency, or any other group or
9 combination acting as an entity.

10 13. **“Remotely Created Payment Order”** or **“RCPO”** means a payment
11 instruction or order, whether created in electronic or paper format, drawn on a payor’s
12 financial account that is initiated or created by the payee, and which is deposited into or
13 cleared through the check clearing system. For purposes of this definition, an account
14 includes any financial account or credit or other arrangement that allows checks, payment
15 instructions, or orders to be drawn against it that are payable by, through, or at a bank.

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

- 17 a) Enters into an agreement or contract with an ISO to sell or market
18 Payment Processing services to a Merchant; or
19 b) Matches, arranges for, or refers Merchants to an ISO for Payment
20 Processing services, or that matches, arranges for, or refers an ISO to
21 Merchants for Payment Processing Services.

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

25 15. **“Settling Defendant”** means Jay Wigdore.

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

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

5 **I.**

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

7 **IT IS ORDERED** that Settling Defendant is permanently restrained and enjoined
8 from Payment Processing or acting as an ISO or Sales Agent, whether directly or through
9 an intermediary.

10 **II.**

11 **Prohibition Against Credit Card Laundering**

12 **IT IS FURTHER ORDERED** that Settling Defendant, his officers, agents,
13 employees, and attorneys, and all other persons in active concert or participation with any
14 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
15 permanently restrained and enjoined from Credit Card Laundering.

16 **III.**

17 **Ban Against Telemarketing**

18 **IT IS FURTHER ORDERED** that Settling Defendant is permanently restrained
19 and enjoined from Telemarketing or assisting others to engage in Telemarketing, whether
20 directly or through an intermediary.

21 **IV.**

22 **Monetary Judgment and Suspension**

23 **IT IS FURTHER ORDERED** that:

24 A. Judgment in the amount of \$462,925.20 (Four Hundred Sixty-Two
25 Thousand, Nine Hundred Twenty-Five Dollars and Twenty Cents) is entered in favor of the
26 Commission against the Settling Defendant as equitable monetary relief.

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

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

- 5 1) The Financial Statement of Jay Wigdore, signed by Jay Wigdore on
6 June 16, 2020; and
- 7 2) The Sworn Statement of Jay Wigdore, signed by Jay Wigdore on
8 October 8, 2020.

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

13 E. If the suspension of the judgment is lifted, the judgment becomes
14 immediately due as to that Defendant in the amount specified in Subsection A above, less
15 any payment previously made pursuant to this Section, plus interest computed from the
16 date of entry of this Order.

17 F. Settling Defendant relinquishes dominion and all legal and equitable right,
18 title, and interest in all assets transferred pursuant to this Order and may not seek the return
19 of any assets.

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

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

27 I. Settling Defendant acknowledges that his Taxpayer Identification Numbers
28 (Social Security Number), which Settling Defendant has submitted to the Commission,

1 may be used for collecting and reporting on any delinquent amount arising out of this
2 Order, in accordance with 31 U.S.C. §7701.

3 J. All money paid to the Commission pursuant to this Order may be deposited
4 into a fund administered by the Commission or its designee to be used for equitable relief,
5 including consumer redress and any attendant expenses for the administration of any
6 redress fund. If a representative of the Commission decides that direct redress to consumers
7 is wholly or partially impracticable or money remains after redress is completed, the
8 Commission may apply any remaining money for such other equitable relief (including
9 consumer information remedies) as it determines to be reasonably related to Settling
10 Defendant's practices alleged in the Complaint. Any money not used for such equitable
11 relief is to be deposited to the U.S. Treasury as disgorgement. Defendant has no right to
12 challenge any actions the Commission or its representatives may take pursuant to this
13 Subsection.

14 **V.**

15 **Customer Information**

16 **IT IS FURTHER ORDERED** that Settling Defendant, his officers, agents,
17 employees, and attorneys, and all other persons in active concert or participation with any
18 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
19 permanently restrained and enjoined from:

20 A. Disclosing, using, or benefitting from customer information, including the
21 name, address, telephone number, email address, social security number, other identifying
22 information, or any data that enables access to a customer's account (including a credit
23 card, bank account, or other financial account), that Defendant obtained prior to entry of
24 this Order in connection with Payment Processing or acting as an ISO or Sales Agent; and

25 B. Failing to destroy such customer information in all forms in his possession,
26 custody, or control within thirty (30) days after entry of this Order.

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1 current personnel. For all others, delivery must occur before they assume their
2 responsibilities.

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

6 **VIII.**

7 **Compliance Reporting**

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

10 A. One year after entry of this Order, Settling Defendant must submit a
11 compliance report, sworn under penalty of perjury, in which Settling Defendant must:

- 12 1) Identify the primary physical, postal, and email address and telephone
13 number, as designated points of contact, which representatives of the
14 Commission may use to communicate with Settling Defendant;
- 15 2) Identify all other telephone numbers and all physical, postal, email and
16 Internet addresses, including all residences;
- 17 3) Identify all of Settling Defendant's businesses by all of their names,
18 telephone numbers, and physical, postal, email and Internet addresses;
- 19 4) Describe the activities of each business, including the goods and services
20 offered, the means of advertising, marketing, and sales, and the
21 involvement of any other defendant (which the Settling Defendant must
22 describe if he knows or should know due to his own involvement);
- 23 5) Identify all business activities, including any business for which he
24 performs services whether as an employee or otherwise and any entity in
25 which he has any ownership interest;
- 26 6) Describe in detail his involvement in each such business, including title,
27 role, responsibilities, participation, authority, controls, and any
28 ownership;

- 1 7) Describe in detail whether and how Settling Defendant is in compliance
2 with each Section of this Order; and
3 8) Provide a copy of each Order Acknowledgement obtained pursuant to this
4 Order, unless previously submitted to the Commission;

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

- 8 1) Any designated point of contact;
9 2) Name, including aliases or fictitious name, or residence address;
10 3) Title or role in any business activity, including any business for which
11 he performs services whether as an employee or otherwise and any
12 entity in which he has any ownership interest, and identify the name,
13 physical address, and any Internet address of the business or entity; or
14 4) The structure of any entity that Settling Defendant has any ownership
15 interest in or controls directly or indirectly that may affect compliance
16 obligations arising under this Order, including: creation, merger, sale,
17 or dissolution of the entity or any subsidiary, parent, or affiliate that
18 engages in any acts or practices subject to this Order.

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

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

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

4 Associate Director for Enforcement
5 Bureau of Consumer Protection
6 Federal Trade Commission
7 600 Pennsylvania Avenue NW
8 Washington, DC 20580

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

10 **IX.**

11 **Recordkeeping**

12 **IT IS FURTHER ORDERED** that Settling Defendant must create certain records
13 for 10 years after entry of the Order, and retain each such record for 5 years. Specifically,
14 Settling Defendant for any business that he, individually or collectively with any other
15 defendant, is a majority owner or controls directly or indirectly, must create and maintain
16 the following records:

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

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

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

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

26 E. Copies of representative samples of each unique advertisement or other
27 marketing material.
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1 **X.**

2 **Compliance Monitoring**

3 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Settling
4 Defendant's compliance with this Order, including the financial representations upon
5 which part of the judgment was suspended and any failure to transfer any assets as required
6 by this Order:

7 A. Within 14 days of receipt of a written request from a representative of the
8 Commission, Settling Defendant must: submit additional compliance reports or other
9 requested information, which must be sworn under penalty of perjury; appear for
10 depositions; and produce documents for inspection and copying. The Commission is also
11 authorized to obtain discovery, without further leave of court, using any of the procedures
12 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),
13 31, 33, 34, 36, 45, and 69.

14 B. For matters concerning this Order, the Commission is authorized to
15 communicate directly with Settling Defendant. Settling Defendant must permit
16 representatives of the Commission to interview any employee or other Person affiliated
17 with Settling Defendant who has agreed to such an interview. The Person interviewed may
18 have counsel present.

19 C. The Commission may use all other lawful means, including posing, through
20 its representatives as consumers, suppliers, or other individuals or entities, to Settling
21 Defendant or any individual or entity affiliated with Settling Defendant, without the
22 necessity of identification or prior notice. Nothing in this Order limits the Commission's
23 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
24 §§ 49, 57b-1.

25 D. Upon written request from a representative of the Commission, any
26 consumer reporting agency must furnish consumer reports concerning the Settling
27 Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
28 §1681b(a)(1).

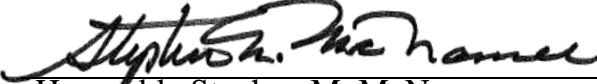
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XI.

Retention of Jurisdiction

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

Dated this 22nd day of January, 2021.


Honorable Stephen M. McNamee
Senior United States District Judge