

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief against Defendants for engaging in unfair acts or practices in connection with Defendants’ processing or arranging for processing of charges to consumers’ credit and debit cards on behalf of Defendants’ merchant clients, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b).

DEFENDANTS

6. Process America, Inc. (“Process America”) is a Nevada corporation located at 5940 South Rainbow Blvd., Las Vegas, Nevada 89118, with operations located at 9040 Topanga

Canyon Blvd., Canoga Park, California 91304. During all times material to this Complaint, Process America has been in the business of soliciting and referring merchants who wish to accept credit and debit card payments to credit card payment processors and providing customer service to those merchants. Process America transacts or has transacted business in this District and throughout the United States.

7. Defendant Craig S. Rickard (“Rickard”) is one of three principal owners and managers of Process America. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Process America, including the acts and practices set forth in this Complaint. Defendant Rickard resides in California. In connection with the matters alleged herein, Defendant Rickard has transacted business in this District and throughout the United States.

8. Defendant Kim Ricketts (“Ricketts”) is one of the three principal owners and managers of Process America. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Process America, including the acts and practices set forth in this Complaint. Defendant Ricketts resides in California and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

9. Defendant Keith Phillips (“Phillips”) is one of the three principal owners and managers of Process America. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Process America, including the acts and practices set forth in this

Complaint. Defendant Phillips resides in California and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMERCE

10. At all times material to this Complaint, Defendants Process America, Rickard, Ricketts, and Phillips (collectively, “Defendants”) have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

SUMMARY OF CASE

11. This is an action by the FTC for injunctive and equitable monetary relief on behalf of consumers against Defendants for their actions in causing more than \$15 million in unauthorized charges to consumers’ credit and debit card accounts. Defendants caused these unauthorized charges by arranging for a group of interrelated merchants engaged in fraud to obtain and maintain merchant accounts that enabled them to process unauthorized credit and debit card payments through the Visa and MasterCard payment networks. Defendants knew or should have known that the merchants were deceptively marketing fraudulent money-making opportunities over the Internet, as evidenced by numerous consumer disputes challenging unauthorized charges; chronically excessive rates of transactions returned by consumers (“chargebacks”); publicly available merchant websites with facially deceptive statements; and notices that several merchant accounts warranted placement in Visa and MasterCard chargeback monitoring and reduction programs.

12. Defendants also caused these unauthorized charges to consumers’ credit card accounts by actively employing, and advising or enabling the fraudulent merchants to employ, numerous tactics that were designed to evade fraud monitoring programs implemented by Visa and MasterCard. Defendants’ tactics included: (1) opening scores of merchant accounts for

processing consumers' credit and debit card charges for the numerous interrelated corporate entities; (2) submitting merchant applications containing false information about the merchants; and (3) instructing the fraudulent merchants how to manipulate their chargeback ratios and numbers by distributing sales transactions and chargebacks among their numerous merchant accounts (a tactic known as "load balancing").

13. Defendants' acts and practices enabled the merchants to establish and prolong their deceptive marketing and sales, resulting in millions of dollars in unauthorized charges to consumers' accounts.

DEFENDANTS' PAYMENT PROCESSING BUSINESS

14. Defendants are in the business of identifying merchants in need of credit and debit card processing services and helping them to establish merchant accounts with a financial institution ("merchant bank"). Without access to a merchant bank that is a member of the card associations, such as MasterCard or Visa, merchants are not able to accept consumer credit or debit card payments.

15. At all times material to this complaint, Defendants worked as an Independent Sales Organization ("ISO") soliciting merchants ("merchant-clients") in need of payment processing services and signing them up for merchant accounts through Cynergy Data, Inc. ("Cynergy"). Cynergy is a payment processor that, in turn, established the merchant accounts through its relationships with merchant banks, including Bank of America Merchant Services and BMO Harris Bank N.A. A payment processor is an entity that merchants and merchant banks use to transmit credit and debit card transaction data, and allocate or settle funds between merchants and consumers via merchant accounts. Merchant banks (also referred to as "acquiring

banks”) frequently enter into contracts with payment processors that manage the bank’s merchant processing program.

16. Defendants and Cynergy essentially acted as intermediaries to link merchant-clients and merchant banks. Typically, ISOs and payment processors have substantial knowledge about the history and business practices of the merchant-clients they bring to the merchant banks.

17. From 2008 to 2009, Defendants serviced merchant accounts for Infusion Media, Inc. and approximately 20 other interrelated Utah- and Nevada- based companies owned and controlled by Jonathan Eborn (“Eborn”) and Michael McClain Miller (“Miller”) that included, among others, Two Part Investments LLC, Two Warnings LLC, Western Networks LLC, Red Vista, LLC, Red Bluff, LLC, and Raven Capital Partners, LLC (collectively, “Infusion Media”).

18. Infusion Media operated several related work-at-home scams for approximately one year. The enterprise’s operation involved duping consumers into purchasing bogus business coaching products by misrepresenting an affiliation with Google, Inc. and stating that consumers could make \$100,000 in six months. Infusion Media’s various websites prominently displayed the low cost of the kit (typically \$1.97 or \$3.88), but failed to disclose adequately that purchase of the kit would trigger automatic recurring monthly charges (typically \$72.21) for a website membership or other program that would continue until the consumer took affirmative steps to cancel it.

19. Under the direction and control of Eborn and Miller, Infusion Media perpetrated a fraudulent online scheme using product names such as “Google Money Tree,” “Google Pro,” “Google Treasure Chest,” “Internet Initiative,” and “Internet Income Pro.”

20. The Infusion Media scheme lasted from at least September 2008 until June 2009, and ceased only after this Court granted the FTC's request for a temporary restraining order ("TRO") halting the scheme. *See FTC v. Infusion Media, Inc.*, Case No. 2:09-cv-01112-RCJ-LRL (D. Nev., filed June 22, 2009) (TRO entered June 24, 2009; Stipulated Final Judgment and Order for Permanent Injunction entered October 4, 2010).

21. The FTC suit charged Eborn, Miller, and other individual defendants, as well as several corporate defendants, including Infusion Media, Inc.; West Coast Internet Media, Inc.; Two Warnings, LLC; and Two Part Investments, LLC, with engaging in widespread deception in violation of Section 5 of the FTC Act, as well as other law violations.

22. From July 2008 until June 2009, Defendants opened and managed scores of merchant accounts for the various Infusion Media entities. Opening and managing these merchant accounts enabled Infusion Media to maintain largely unfettered access to the credit card payment system and to use their merchant accounts to initiate millions of dollars in unauthorized charges to consumers' credit and debit card accounts.

UNDERWRITING AND MONITORING MERCHANT ACCOUNTS

23. Merchant banks and payment processors have underwriting criteria that a merchant must meet to obtain a merchant account. These criteria are designed to avoid losses associated with sales transactions that are charged back, especially losses due to transactions induced by fraud or unauthorized transactions. A chargeback occurs when a customer contacts her credit card issuing bank to dispute a charge appearing on her credit card account statement, and the issuing bank charges that amount back to the merchant bank. Each chargeback receives a chargeback reason code that describes the nature of the dispute, such as "no authorization obtained" or "requested/required authorization not obtained and fraudulent transaction."

24. The card associations have established compliance monitoring programs that identify (by billing descriptor) those merchants who generate excessive numbers of chargebacks and have high chargeback rates. The card associations calculate a merchant's chargeback rate as a ratio, which represents the number of chargebacks generated by the merchant in a particular month divided by the number of sales transactions submitted by the merchant in the preceding month.

25. When a merchant generates excessive chargebacks and has a high chargeback rate for two consecutive months, Visa and MasterCard place the merchant in compliance monitoring programs designed to detect and correct practices that harm consumers and to protect the integrity of the payment system.

26. For example, Visa identifies U.S. merchants for its Merchant Chargeback Monitoring Program ("MCMP") when the following three conditions arise in the same calendar month: (a) a merchant has at least 100 sales transactions; (b) the merchant has at least 100 chargebacks; and (c) the merchant has a chargeback rate of at least one percent. During 2008 and 2009, MasterCard maintained similar thresholds and triggers for its "Excessive Chargeback Merchant" program ("ECM").

27. Visa's MCMP tracks merchants by their "DBA Identifiers" (also referred to as the "billing descriptors"), which appear on cardholder statements. Changes to a merchant's billing descriptor may thwart the effectiveness of Visa's MCMP monitoring. When a merchant's billing descriptor is changed, it means that the next time the same merchant has excessive chargebacks, that merchant will be identified in the Visa system as if it is in the *initial* month of monitoring, thus avoiding the imposition of chargeback fees, reporting requirements, and additional scrutiny that Visa otherwise would have required.

28. An ISO Processing Agreement between Defendants and Cynergy provided Defendants the right to make changes to merchant information, including a merchant-client's DBA Identifier.

29. To assist in the underwriting process, card associations have created a program to track merchants and individuals that previously have had merchant accounts terminated by merchant banks for, among other things, excessive chargebacks. MasterCard, for example, maintains the Member Alert to Control High-risk Merchants ("MATCH") list. This list includes merchants (along with the principals) whose accounts were terminated by merchant banks for certain reasons. For example, a merchant bank must place a merchant on the MATCH list when the merchant bank terminates the merchant's processing account for fraud, excessive chargebacks or other violations of card association operating rules. Many acquirers will refuse to establish merchant accounts for merchants or individuals who appear on the MATCH list, given the high risk involved.

30. Defendants' ISO Agreement with Cynergy required Defendants to solicit and sign up merchant-clients that met the parameters of the underwriting policies established by Cynergy and the merchant bank. To that end, Defendants had to conduct a preliminary review of merchant applications, merchant agreements and supporting documentation, and had to perform due diligence on prospective merchant-clients, including site inspections of business premises.

31. At all relevant times, Defendant Rickard was directly in charge of sales and business development, which included oversight of the Risk and Underwriting Department responsible for boarding new merchant accounts and monitoring the transaction and chargeback activity of existing merchant accounts.

32. To facilitate the opening and monitoring of merchant accounts, Defendants entered each merchant-client's information into Cynergy's Virtual Merchant Application System ("VIMAS") computer database, and then faxed copies of the application, contract, and supporting documents to Cynergy.

33. After Defendants established a merchant-client's account, they maintained access to VIMAS. This access enabled Defendants to view and monitor transaction activity for the merchant-client, including individual transaction details, as well as monthly and year-to-date summaries of overall transaction and chargeback counts and volume for each merchant account.

34. In addition to the chargeback information provided by VIMAS, Defendants received from Cynergy regular emails containing near real-time chargeback activity for Defendants' portfolio of merchants. Using this information, Process America's Risk and Underwriting Department compiled and faxed to individual merchant-clients a list of all daily chargeback activity, including chargeback reason codes.

35. In late June and early July 2008, Defendants first solicited and arranged to open six separate merchant accounts in the name of Infusion Media, Inc., each with a monthly processing volume threshold of \$40,000. The monthly processing volume threshold is an average amount of sales that the merchant-client expects to submit through a merchant account each month. Pursuant to merchant agreements, Defendants' merchant-clients are generally prohibited from billing an amount substantially above this threshold. The purpose of the threshold is to determine what underwriting requirements are necessary for a merchant-client. Low-threshold accounts have fewer underwriting requirements.

36. By June 2009, Defendants had arranged for Infusion Media to obtain no fewer than 131 separate merchant accounts, using the names of approximately 20 interrelated Infusion

Media companies that were associated with at least 27 different DBA names. The merchant accounts had monthly processing volume thresholds ranging from \$7,000 to \$50,000.

37. As explained in greater detail below, over the course of one year, using the chargeback information noted above, Defendants enabled and advised Infusion Media to distribute its volume of new sales transactions among various new merchant accounts, instead of using accounts that had already generated scrutiny by the card associations. Defendants also established numerous merchant accounts for Infusion Media entities by supplying false information to Cynergy and the merchant bank. This conduct allowed Infusion Media uninterrupted access to the payment networks to process a total of more than \$15.8 million in charges to consumer credit and debit card accounts.

DEFENDANTS' UNFAIR BUSINESS PRACTICES

A. Defendants Increased The Number Of Merchant Accounts For Infusion Media Entities Despite Excessive Chargeback Rates

38. Over the course of managing Infusion Media's numerous merchant accounts, Defendants received information about high chargeback rates that Defendants should have used to investigate and require corrections to Infusion Media's deceptive marketing practices. Instead, Defendants used the information to enable Infusion Media to avoid detection by the card associations or termination by the merchant bank.

39. Specifically, despite Defendants' knowledge of Infusion Media's excessive chargebacks and qualification for Visa and MasterCard chargeback monitoring programs, Defendants continued to arrange for new merchant accounts for various Infusion Media entities. By creating these numerous additional low-volume threshold accounts, not only did Defendants enable Infusion Media to continue initiating unauthorized charges to consumer credit cards as

older accounts were scrutinized and closed, but Defendants also enabled Infusion Media to evade the stricter underwriting requirements necessary for a single high-volume account.

40. Starting in or before October 2008, and continuing through at least mid-February 2009, Defendants regularly reviewed and transmitted by facsimile to Infusion Media numerous chargeback notices they received directly from Cynergy.

41. Based on access to VIMAS, as well as regular chargeback notices they reviewed and faxed to Infusion Media, Defendants knew that various Infusion Media merchant accounts were generating high numbers of Visa and MasterCard chargebacks. These chargeback notices included hundreds of disputes listing “No Cardholder Authorization” as the chargeback reason code. Nevertheless, Defendants added scores of new merchant accounts. Defendants did so even after they received notice that certain accounts had triggered credit card association chargeback monitoring programs and even as the merchant bank closed older merchant accounts as the result of high chargebacks.

42. Indeed, on or about March 31, 2009, Harris Bank closed 14 Infusion Media merchant accounts, but not before Defendants signed up a batch of 15 new merchant accounts in the names of eight various Infusion Media entities, using the DBAs “Mony [sic] Tree Systems” (“Mony Tree”) and “Income Initiative Pro” (“Income Initiative”). Defendants obtained and reviewed the merchant applications, contracts, marketing materials, and supporting documentation for each merchant account, which listed Miller and Eborn as the co-owners of each company: Alta Business Solutions, LLC; Basin Marketing Solutions, LLC; Career At Home Network, LLC; Junction Solutions, LLC; Mountain Vista Marketing, LLC; Online Jobs Network, LLC; Ridgebrook, LLC; and Superstar Income System, LLC. Each merchant account had a monthly processing volume threshold ranging from \$20,000 to \$50,000.

43. On or about April 30, 2009, Harris Bank closed four more Infusion Media merchant accounts, but not before Defendants signed up a batch of 44 additional Mony Tree and Income Initiative merchant accounts in the names of the same eight Infusion Media entities (listed in paragraph 41). Each merchant account had a monthly processing volume threshold ranging from \$20,000 to \$25,000.

44. Between May 28, 2009 and June 5, 2009, Defendants signed up 48 entirely new Infusion Media merchant accounts in the names of eight new Infusion Media entities, using the DBA “SafeLock ID.” Defendants obtained and reviewed the merchant applications, contracts, marketing materials, and supporting documentation for each account, which listed Amy Russon (Eborn’s administrative assistant) as the owner of each company: Asset Safety Services, LLC; Azure ID Group, LLC; Hapland ID Group, LLC; ID Protection Program, LLC; Identity Protection Group, LLC; Marlin Identity Safety, LLC; Patriot Identity Protection, LLC; and Theft Protection Systems, LLC. Each account had a monthly processing volume threshold of \$7,500.

45. In total, between June 2008 and June 2009, Defendants obtained, reviewed, and submitted merchant applications, contracts, marketing materials, and supporting documentation through which Infusion Media obtained and maintained 131 separate merchant accounts. During this time, Defendants exponentially increased Infusion Media’s monthly transaction threshold, and enabled Infusion Media to continue its fraudulent operations as Visa and MasterCard flagged older merchant accounts and Infusion Media entities for excessive chargebacks and placed them in chargeback monitoring programs.

B. Defendants Used Deceptive Information On Infusion Media’s Applications

46. Defendants accepted merchant applications from, and sometimes drafted merchant application forms on behalf of, the Infusion Media enterprise. Defendants knew or should have known that these applications contained deceptive information. These deceptive

statements helped to conceal the interrelated nature of the Infusion Media entities, to mask the deceptive features of Infusion Media's marketing materials, and to portray Infusion Media as a lower credit and underwriting risk to the payment networks and banks.

47. In November 2008, Defendants responded to a request from Harris Bank for copies of Infusion Media's website marketing materials by providing copies of web pages that Defendants knew or should have known were false. Defendants passed along to the bank and processor copies of web pages that Eborn admitted to doctoring so that the pages "over disclosed" material terms and conditions of the sales offer – namely a recurring monthly charge of \$72.21 – that were otherwise hidden on the live web pages. Eborn's admission was made in an email that he forwarded to Process America, in which Eborn instructs Infusion Media employees to create new pages with disclosures not present on the actual web pages, and makes the further admonition: "Don't change this on the real pages" In spite of this evidence, Defendants passed along the phony webpages to Harris Bank.

48. Over time, Infusion Media's merchant applications, contracts, and supporting documentation for each merchant account identified various combinations of individuals as co-owners of each Infusion Media entity.

49. Initially, the paperwork to establish a merchant account identified Miller and Eborn as co-owners of each Infusion Media entity. Later, the paperwork identified as co-owners Miller and Stephanie Burnside ("Burnside"), who is Eborn's spouse. Still later, paperwork listed as co-owner Amy Russon, who was Eborn's administrative secretary, for several "Safelock ID" entities controlled by Miller and Eborn (see paragraph 43, above). It should have been obvious to Defendants that Infusion Media's use of these names was a deliberate attempt by Miller and Eborn to evade detection by credit card associations as at-risk merchants.

50. Indeed, in December 2008, Defendants accepted and submitted to Cynergy Infusion Media merchant account applications for Google Treasure Chest. At first, the merchant applications, contracts, and supporting documentation listed Miller and Burnside as the company co-owners. Shortly after Defendants submitted these two Google Treasure Chest merchant account applications for approval, Cynergy notified Defendants that Burnside's name appeared on MasterCard's MATCH list.

51. To avoid deactivation of the Google Treasure Chest merchant accounts as a result of the MATCH hit, on or around January 6, 2009, Defendants removed Burnside's name from the Google Treasure Chest applications and resubmitted them. Defendants did so in direct contravention of their written policy that all owners of a company must sign the merchant application. Thereafter, all of the Google Treasure Chest merchant accounts listed Miller as the sole owner of the company.

52. Defendants accepted and submitted scores of merchant applications in which they knew or should have known that Infusion Media misrepresented that 100 percent of sales were "MOTO" (*i.e.*, mail order/telephone order), no sales occurred via the Internet, and the company engaged in "no recurring billing." In truth, Defendants knew or should have known these statements were false, as evidenced by the numerous documents Defendants received in which Infusion Media disclosed that it generated a significant percentage of purported sales via the Internet and engaged in recurring billing.

53. Defendants also accepted and submitted merchant applications for Google Treasure Chest in which they knew or should have known that Infusion Media misrepresented the type of goods or services sold as "Advertising Services."

54. The deceptive and inaccurate information submitted by Defendants affected the underwriting and risk functions of the payment processor and merchant banks.

C. Defendants Advised Infusion Media To Use Load Balancing To Avoid Fraud Detection

55. As noted above, Defendants used Cynergy's VIMAS computer database to monitor transaction and chargeback activity. Defendants also received from Cynergy regular emails with near real-time chargeback activity for their portfolio of merchants.

56. With this information, Defendants took steps to circumvent the card associations' ability to track transaction and chargeback counts. Specifically, Defendants advised Infusion Media precisely how to allocate its sales volume across multiple merchant accounts to avoid triggering the thresholds for the chargeback monitoring programs, a practice known as "load balancing."

57. In many instances, Defendants engaged in load balancing by directing Infusion Media to funnel sales transactions through specific accounts with lower transaction volume. This practice kept each merchant account under its approved monthly processing threshold (e.g., \$7,000, \$20,000, or \$40,000) and avoided added scrutiny from the processor or the merchant bank.

58. In other instances, Defendants engaged in load balancing by directing Infusion Media to cease processing transactions on particular merchant accounts – those that were in danger of triggering the Visa or MasterCard chargeback thresholds – for a period of 30 days. Because the chargeback monitoring programs require at least 100 transactions in a month (in addition to excessive chargeback numbers and ratios), this type of load balancing was designed to keep certain Infusion Media accounts out of Visa's MCMP and MasterCard's ECM.

59. Defendants also engaged in load balancing by suggesting to Infusion Media that it needed more merchant accounts in order to spread out the volume of transactions.

60. For example, on or about May 27, 2009, Ruth Elasri, an employee of Process America reportedly in charge of merchant compliance, wrote an email to Eborn and Miller directing them on how to avoid the Visa and MasterCard chargeback thresholds. Elasri advised Eborn and Miller to stop processing on a particular account for about 30 days because the account was “going to hit MasterCard report by hitting 50 by month end.” She also advised them to process consumer transactions through other accounts in the interim. Elasri added that if the other accounts posted high chargebacks, Defendants could add more accounts. Further, she advised Infusion Media to balance transactions across all the accounts as evenly as possible.

61. In an investigational hearing with the FTC, Elasri testified that the possible reason for load balancing in this context was to avoid hitting the card associations’ chargeback monitoring programs.

62. In an email exchange in mid-October 2008, Michael Wolpin, Process America’s director of Risk and Underwriting, advised Eborn that two Infusion Media merchant accounts had an increasing number of chargebacks that were approaching amounts that would trigger Visa and MasterCard scrutiny. Wolpin wrote: “You are not balanced. . . . If you all balance on your side, next month should be OK.” In other words, in response to increasing chargebacks, Defendants advised Infusion Media to distribute the volume of transactions more evenly among other merchant accounts, thereby diminishing the chance that the amount of chargebacks would reach thresholds where credit card associations scrutinize accounts for fraudulent activity or unauthorized charges.

63. As Scott Freedman, an employee in Process America's Chargeback Department, has testified, it was a common practice for Process America to compile and provide chargeback information to merchants throughout Infusion Media's operations. Freedman was largely responsible for compiling the necessary data.

64. For example, on November 3, 2008, Freedman provided to Defendant Rickard the number of chargebacks and the number of chargebacks coded as "cardholder does not recognize charge" for four merchant accounts. Defendant Rickard forwarded these chargeback totals, which ranged from 54 to 350 per account, to Eborn the following day.

65. Additionally, on June 15, 2009, Freedman sent Elasri an email with a spreadsheet detailing transaction data for the first 10 days of June, including chargeback data through June 15, for the 131 accounts opened for Infusion Media. Freedman highlighted the accounts with high chargebacks and the accounts that Infusion Media should use going forward to avoid hitting threshold chargeback numbers that would trigger the chargeback monitoring programs.

66. In sum, Defendants used the information at their disposal to instruct Infusion Media precisely how to load balance across the numerous merchant accounts that Defendants had established. These practices enabled Infusion Media to continue charging consumer credit card accounts and to avoid or delay detection by chargeback monitoring programs over the course of nearly one year, and at the cost of millions of consumer dollars.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

67. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce." Acts or practices are unfair under Section 5 of the FTC Act if (1) they cause substantial injury to consumers; (2) consumers cannot reasonably avoid

injury themselves; and (3) the injury is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT ONE

68. As described in Paragraphs 37-65 of this Complaint, Defendants:

- a. Established scores of additional merchant accounts for Infusion Media;
- b. Provided merchant banks and others with false or misleading information to obtain and maintain Infusion Media's merchant accounts; and
- c. Directed Infusion Media to take actions designed to evade chargeback monitoring programs that detect and prevent fraud and unauthorized billing.

69. The acts or practices described in paragraph 67, individually or in combination, caused millions of dollars of unauthorized charges on consumers' credit cards. Defendants' acts or practices therefore caused consumers substantial injury that was not reasonably avoidable by consumers themselves and was not outweighed by countervailing benefits to consumers or competition.

70. Accordingly, Defendants' acts or practices as alleged in this Complaint constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and (n).

CONSUMER INJURY

71. Consumers throughout the United States have suffered substantial injury as a result of the Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THE COURT'S POWER TO GRANT RELIEF

72. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
- B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
- D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel

Dated: _____

By: _____

KAREN S. HOBBS (DC Bar No. 469817)
khobbs@ftc.gov
BENJAMIN R. DAVIDSON (DC Bar No.
975509)
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-286
Washington, DC 20580
202-326-3587 (Hobbs)
202-326-2207 (Feldmann)
202-326-3395 (Fax)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION