UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION, *Plaintiff,* v. PROCESS AMERICA, INC., a Nevada corporation; CRAIG RICKARD, individually, and as an officer of Process America, Inc; KIM RICKETTS, individually, and as an officer of Process America, Inc.; and KEITH PHILLIPS, individually, and as an officer of Process America, Inc. *Defendants.*	CIVIL NO. _____ **[Proposed] STIPULATED PERMANENT INJUNCTION AND FINAL ORDER AGAINST DEFENDANT CRAIG RICKARD**

Plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), filed its Complaint against Defendants Process America, Inc. ("Process America"), Craig Rickard ("Rickard"), Kim Ricketts ("Ricketts"), and Keith Phillips ("Phillips"), for a permanent injunction and other equitable relief in this action, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission and Defendant Rickard hereby stipulate to the entry of this Stipulated Permanent Injunction and Final Order ("Order") to resolve all matters in dispute in this action between them.

THEREFORE, it is STIPULATED, AGREED, AND ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter.

2. In its Complaint, the FTC charges that Defendant engaged in unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), by enabling merchants to impose unauthorized charges to consumers' credit and debit card accounts.

3. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in the Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.

4. Defendant has entered into this Order freely and without coercion, and Defendant acknowledges that he has read the provisions of this Order and is prepared to abide by them.

5. Plaintiff and Defendant have agreed that the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.

6. Defendant waives all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claim he may have against Plaintiff, its employees, representatives, or agents.

7. Defendant waives any claim that he may hold under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney's fees.

8. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

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

1. "ACH Debit" means any completed or attempted debit to a Person's account at a financial institution that is processed electronically through the Automated Clearing House Network.

2. "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 acquiring or merchant bank.

3. "Chargeback Rate" means the proportion (expressed as a percentage) of chargebacks out of the total number of attempted credit or debit card sales transactions, calculated separately for each payment card association (e.g., American Express, Discover Card, MasterCard, or Visa).

4. "Client" means any Person, including, but not limited to, any merchant for whom Defendant acts as a Sales Agent, either directly or indirectly.

5. "Independent Sales Organization" or "ISO" means any Person that (a) enters into an agreement or contract with a Payment Processor to sell or market Payment Processing services to a merchant; and (b) holds, directly or indirectly, either partial or full liability in the event of losses related to the Payment Processing activities conducted by or on behalf of the merchant.

6. "Infusion Media" means the entities and individuals named as defendants in *FTC v. Infusion Media, Inc.*, Case No. 2:09-cv-01112-RCJ-LRL (D. Nev., filed June 22, 2009), and includes Infusion Media, Inc., Two Part Investments LLC, Two Warnings LLC, Western

Networks LLC, Red Vista, LLC, Red Bluff, LLC, Raven Capital Partners, LLC, and any other entity owned or controlled by Jonathan Eborn, Michael McClain Miller, or Stephanie Burnside during the time period July 2008 through June 2009.

7. "Money-Making Opportunities" means any good or service represented to enable consumers or to assist consumers to earn income by working from home or to obtain employment in exchange for an upfront fee, grants, monetary assistance, scholarships, or business opportunities.

8. "Negative Option Feature" means, in an offer or agreement to sell or provide any product or service, a provision under which the consumer's silence or failure to take an affirmative action to reject products or services or to cancel the agreement is interpreted by the Client, seller or merchant as acceptance of the offer. Offers or agreements with Negative Option Features include, but are not limited to: (a) free or introductory price trial offers in which the consumer receives a product or service for free or at a nominal or introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the product or service if he or she does not take affirmative action to cancel, reject, or return the product or service before the end of that period; (b) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (c) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

9. "Outbound Telemarketing" means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution in which the

telephone calls are initiated by the Person engaged in telemarketing as opposed to the customer or donor.

10. "Payment Processing" means providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment mechanism, including, but not limited to, Remotely Created Payment Orders, Remotely Created Checks, ACH Debits, or debit, credit, prepaid, or 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) providing the means to transmit sales transaction data from merchants to acquiring banks or other financial institutions; (c) clearing, settling, or distributing proceeds of sales transactions from acquiring banks or financial institutions to merchants; or (d) processing Chargebacks or returned Remotely Created Payment Orders, Remotely Created Checks, or ACH Debits.

11. "Payment Processor" means any Person providing Payment Processing services in connection with another Person's sale of goods or services, or in connection with any charitable donation.

12. "Person" means any natural person or any entity, corporation, partnership, or association of persons.

13. "Remotely Created Check" or "RCC" means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the Person on whose financial account the check is drawn. A remotely created check is often also referred to as a "demand draft," "telephone check" or "preauthorized draft." For purposes of this definition, a remotely created check originates as a paper-based transaction, but can be processed

subsequently through electronic means (such as through check imaging or scanning) or through non-electronic means.

14. "Remotely Created Payment Order" or "RCPO" means a payment instruction or order drawn on a Person's financial account that is initiated or created by the payee and that does not bear a signature applied, or purported to be applied, by the Person on whose financial account the order is drawn, and which is deposited into or cleared through the check clearing system. For purposes of this definition, unlike a Remotely Created Check, a Remotely Created Payment Order does not originate as a paper-based transaction. A Remotely Created Payment Order is created when a payee directly or indirectly enters financial account and routing numbers into an electronic check template that is converted into an electronic file for deposit into the check clearing system.

15. "Representatives" means the Defendant's officers, agents, servants, employees, attorneys, and those Persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise.

16. "Sales Agent" means a Person that matches, arranges, or refers prospective Clients or Clients to a Payment Processor or ISO for Payment Processing, but does not hold any contractual liability in the event of losses related to the Payment Processing activities conducted by or on behalf of Clients. As such, a Sales Agent may be involved in recommending a particular Payment Processor or ISO to a prospective Client, forwarding to the Payment Processor or ISO a prospective Client's or Client's merchant application, or negotiating rates and fees charged by a Payment Processor or ISO, but a Sales Agent may not be involved in any Payment Processing and may not act as an ISO.

17. "Total Return Rate" means the proportion (expressed as a percentage) of all attempted ACH Debit, RCC or RCPO transactions that are returned for any reason, whether before or after payment, out of the total number of such attempted transactions, calculated separately for each transaction type.

18. The words "and" and "or" shall be understood to have both conjunctive and disjunctive meanings.

I.

PROHIBITION ON PAYMENT PROCESSING

IT IS ORDERED that Defendant Rickard whether acting directly or through any Person, subsidiary, division, or other device, is hereby permanently restrained and enjoined from Payment Processing.

II.

PROHIBITION ON ISO SERVICES

IT IS FURTHER ORDERED that Defendant Rickard, whether acting directly or through any Person, subsidiary, division, or other device, is permanently restrained and enjoined from acting as an ISO.

III.

PROHIBITION AGAINST ACTING AS A SALES AGENT FOR HIGH RISK CLIENTS

IT IS FURTHER ORDERED that Defendant Rickard, whether acting directly or through any Person, subsidiary, division, or other device, is permanently restrained and enjoined from acting as a Sales Agent for any Client engaged in:

A. Offering to sell, selling, promoting, or marketing goods or services with a Negative Option Feature;

B. Outbound Telemarketing;

C. Offering to sell, selling, promoting, or marketing the following goods or services:

    1. Money-Making Opportunities;

    2. Credit card or identity theft protection services;

    3. Timeshare resale services;

    4. Buying clubs;

    5. Medical discount membership plans; or

D. Conduct that has qualified a Client or prospective Client, including the principal(s) and controlling person(s) of the entity, person(s) who have a majority ownership interest in the entity, and any corporate name, trade name, fictitious name or aliases under which such person(s) do or have done business, for placement in any payment card association's chargeback monitoring program.

IV.

PROHIBITION AGAINST ACTING AS A SALES AGENT FOR ENTITIES ENGAGED IN DECEPTIVE OR UNFAIR ACTS OR PRACTICES

IT IS FURTHER ORDERED that Defendant Rickard, whether acting directly or through any Person, subsidiary, division, or other device, is permanently restrained and enjoined from acting as a Sales Agent for any Client that he knows or should know is engaged in or is likely to be engaged in a deceptive or unfair act or practice prohibited by Section 5 of the FTC Act, including, but not limited to:

A. The unauthorized debiting or charging of consumer bank or credit card accounts;

B. 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 seller's refund, cancellation, exchange, or repurchase policies; or

C. Tactics to evade the fraud and risk monitoring programs established by any financial institution, acquiring bank, or the operators of any payment system, including, but not limited to, 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 smaller transactions; or using shell companies to apply for additional merchant accounts.

V.

REASONABLE SCREENING OF PROSPECTIVE CLIENTS

IT IS FURTHER ORDERED that Defendant Rickard and his Representatives, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from acting as a Sales Agent for any prospective Client without first engaging in a reasonable screening of the prospective Client to determine whether the prospective Client's business practices are, or are likely to be, deceptive or unfair within the meaning of Section 5 of the FTC Act. Such reasonable screening shall include, but not be limited to:

A. Obtaining from each prospective Client, including the principal(s) and controlling person(s) of the entity, person(s) who have a majority ownership interest in the entity, and any corporate name, trade name, fictitious name or aliases under which such person(s) do or have done business:

1. A description of the nature of the prospective Client's business, including describing the nature of the goods and services sold for which the prospective Client seeks Payment Processing services;
2. A list of all business and trade names, fictitious names, DBAs, and Internet websites under or through which the prospective Client has marketed or intends to market the goods and services for which the prospective Client seeks Payment Processing services;
3. Each physical address at which the prospective Client has conducted or will conduct the business(es) identified pursuant to subsection (1) of this Section V.A;
4. The name and address of every bank and Payment Processor used by the prospective Client during the preceding two years, and all merchant identification numbers ("MIDs") used by any such banks or Payment Processors in connection with the prospective Client;
5. The prospective Client's past Chargeback Rate, Total Return Rate, and estimates of future Chargeback Rates and Total Return Rates; and
6. The names of trade and bank references; and
7. whether the prospective Client, including the principal(s) and controlling person(s) of the entity, person(s) who have a majority ownership interest in the entity, and any corporate name, trade name, fictitious name or aliases under which such person(s) do or have done business, has ever been:
    a. placed in a payment card association's chargeback monitoring program; or

b. the subject of legal action taken by the Commission or any other state or federal law enforcement agency;

B. Taking reasonable steps to assess the accuracy of the information provided pursuant to Section V.A of this Order, including but not limited to reviewing, from an IP address that is not associated with Defendant Rickard, the Internet websites used by the prospective Client to market its goods or services, and obtaining and reviewing copies of monthly Payment Processing statements issued by any bank and Payment Processor used by the prospective Client during the preceding six (6) months; and

C. Obtaining and reviewing all current marketing materials for each good or service related to the offer for which the Defendant would provide Sales Agent services for the prospective Client.

VI.

PROHIBITION ON USE OF CONSUMER ACCOUNT INFORMATION

IT IS FURTHER ORDERED that Defendant Rickard, whether acting directly or through any Person, subsidiary, division, or other device, is permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from Infusion Media customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), which was obtained by any Defendant prior to entry of this Order; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning,

pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

PROVIDED, HOWEVER, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VII.

MONETARY JUDGMENT AND SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against Defendant Rickard in the amount of one hundred eighty-four thousand eight hundred fifty-seven dollars and forty-six cents ($184,857.46), for equitable monetary relief.

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

C. The Commission's agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statements and related documents (collectively, "Financial Statements") submitted to the Commission, namely:

1. The Financial Statement of Individual Defendant Craig Rickard signed on June 11, 2013, including the attachments thereto;
2. The additional documentation submitted via email from Defendant's counsel Steven Rayman to Commission counsel Karen S. Hobbs and Benjamin Davidson:
    a. dated June 28, 2013, attaching Defendant's responses to additional questions and copies of tax returns;

b. dated July 2, 2013, attaching Defendant's accounting for income during 2009 through 2011; and

c. dated July 2, 2013, attaching Defendant's responses to additional questions.

D. The suspension of the judgment will be lifted as to Defendant Rickard if, upon motion by the Commission, the Court finds that he failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the Financial Statements identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Defendant Rickard in the amount specified in Subsection A. above (which the parties stipulate only for purposes of this Section represents the unjust enrichment; alleged in the Complaint, less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order).

F. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred under this Order and may not seek the return of any assets.

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

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

I. All funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or that funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Defendant Rickard shall have no right to challenge the Commission's choice of remedies under this Section. Defendant Rickard shall have no right to contest the manner of distribution chosen by the Commission.

J. Defendant Rickard acknowledges that his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendant previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

VIII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Rickard obtains acknowledgments of receipt of this Order:

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

B. For three (3) years after entry of this Order, Defendant Rickard for any business that he, individually or collectively with any other Person, is the majority owner or

directly or indirectly controls, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities**.**

C. For three (3) years after entry of this Order, Defendant Rickard must deliver a copy of this Order to all Payment Processors to which he refers prospective Clients as a Sales Agent.

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

IX.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Rickard makes timely submissions to the Commission:

A. 180 days after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury.

1. Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of Defendant's businesses 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 Defendant (which Defendant Rickard must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

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

B. For ten (10) years following entry of this Order, Defendant Rickard must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Defendant Rickard must report any change in: (a) any designated point of contact or (b) the structure of any entity that Defendant has any ownership interest in or directly or indirectly controls 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, Defendant Rickard must report any change in: (a) name, including aliases or fictitious name, or residence address or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

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

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

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The

subject line must begin: FTC v. Process America, Inc., Craig Rickard, Kim Ricketts, and Keith Phillips, X1023184.

X.

RECORDKEEPING

IT IS FURTHER ORDERED that Defendant Rickard must create certain records for ten (10) years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant Rickard for any business in which he, individually or collectively with any other Defendant, is a majority owner or directly or indirectly controls, must maintain the following records:

A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

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

C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response; and

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

XI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Rickard's compliance with this Order, including the financial representations upon which the judgment was suspended:

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

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

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant Rickard or any individual or entity affiliated with him, 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.

XII.

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.

SO ORDERED, this _____ day of _____ , 2013.

_____
United States District Judge

The parties, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof.

FOR THE DEFENDANT:

Craig Rickard, Defendant
Individually

Dated: 8-14-13

Steven L. Rayman, Esquire
Attorney for Defendant Rickard

Dated: 8-14-13

FOR PLAINTIFF, THE FEDERAL TRADE COMMISSION:

JONATHAN E. NUECHTERLEIN
FEDERAL TRADE COMMISSION,
General Counsel

Dated: 10/31/13

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