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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

FEDERAL TRADE COMMISSION,

Civ. No. CV07-0533 BR

Plaintiff,

v.

MERCHANT PROCESSING, INC.;
VEQUITY FINANCIAL GROUP, INC.;
DIRECT MERCHANT PROCESSING,
INC.; PPI SERVICES INC.; AARON
LEE RIAN; and KARELY
MCCARTHY, A.K.A. KARLY
SPEELMAN,

FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF

Defendants.

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its complaint alleges as follows:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against the Defendants for engaging in deceptive and unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

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

3. Venue in the United States District Court for the District of Oregon is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41-58. The Commission 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. Section 13(b) of the FTC Act authorizes the FTC to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law enforced by the FTC, and to secure such equitable relief as may be appropriate in each case, including redress, restitution, and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

6. Defendant Merchant Processing, Inc. (“MPI”), is an Oregon corporation with its mailing address and principal place of business at 1600 NW Compton Drive, #357, Beaverton, Oregon 97006. MPI transacts or has transacted business in the District of Oregon and throughout the

United States.

7. Defendant Vequity Financial Group, Inc. (“Vequity”), is an Oregon corporation with its mailing address and principal place of business at 14845 S.W. Murray Scholls Drive, Suite 110, Beaverton, Oregon 97007. Vequity transacts or has transacted business in the District of Oregon and throughout the United States.

8. Defendant Direct Merchant Processing, Inc. (“DMP”), is an Oregon corporation with its mailing address and principal place of business at 14845 S.W. Murray Scholls Drive, Suite 110, Beaverton, Oregon 97007. DMP transacts or has transacted business in the District of Oregon and throughout the United States.

9. Defendant PPI Services Inc. (“PPI”) is an Oregon corporation with its mailing address and principal place of business at 18645 S.W. Farmington, Suite 133, Aloha, Oregon 97007. PPI transacts or has transacted business in the District of Oregon and throughout the United States. PPI commenced operations in April 2007, shortly after MPI was taken over by a Receiver.

10. Defendant Aaron Lee Rian (“Rian”) is president of MPI, and president and secretary of Vequity and DMP. He resides in the District of Oregon. Rian transacts or has transacted business in this district and throughout the United States. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts or practices set forth in the complaint.

11. Defendant Karely McCarthy, a.k.a. Karly Speelman (“McCarthy”), was Director of Inside Sales for MPI, and is sole owner of PPI. She resides in the District of Oregon. McCarthy transacts or has transacted business in this district and throughout the United States. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed,

controlled, or participated in the acts or practices set forth in the complaint.

COMMERCE

12. At all times relevant to this Complaint, Defendants have maintained a substantial course of business offering for sale and selling credit and debit card merchant account services and offering for lease related goods and services in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS PRACTICES

MPI Defendants

13. At least one Defendant, MPI, is an Independent Sales Organization (“ISO”) in the credit and debit card processing industry. Such ISOs act as liaisons between small business merchants who want to accept credit and debit card payments and financial institutions that are members of card associations such as MasterCard and Visa. ISOs solicit merchants to establish accounts (“merchant accounts”) with a financial institution (the “acquiring bank”) into which are deposited the proceeds of the merchants’ card sales. For this service, merchants pay processing fees, including a “discount rate” that is a percentage of each sale they make.

14. MPI, Vequity, DMP, Rian, and McCarthy (“MPI Defendants”) engage in the practices described herein. MPI, Vequity, and DMP share the same principal, some of the same customer service personnel and materials, and the same mailing address.

15. Defendants typically make their first contact with small business merchants by telemarketing cold calls, in which the callers tell the merchants that Defendants can save them money on card processing. The callers set up appointments for the merchants to meet Defendants’ agents at the merchants’ places of business.

16. Defendants' sales agents tell the merchants that Defendants can offer them a lower discount rate, based on the merchants' monthly volumes. The agents typically quote a discount rate that is considerably lower than the rate the merchants are paying for their existing processing. The agents represent this rate as the only processing rate the merchants will be required to pay if they switch to Defendants' services. Defendants claim that they can offer these rates because Defendants eliminate the "middleman" in the processing transaction, and therefore the rates are "wholesale" rates. The sales agents also quote a fixed per-transaction fee that merchants will be required to pay. Typically, the agents do not mention any other fees.

17. Using statements that the merchants have received from their current processors, defendants' agents compute a "cost analysis," which they claim compares the processing fees the merchants are currently paying with those that Defendants would offer. After performing this analysis, Defendants promise substantial savings. If merchants ask if there are any other fees, the agents typically say no.

18. Defendants also offer for lease card processing terminals, also known as card swipe terminals ("terminals"). The terminals are subject to four-year leases between the merchants and third-party leasing companies and obligate merchants to pay monthly amounts to the leasing companies. Many merchants solicited by Defendants are already bound by equipment leases. Typically, the monthly payments on the four-year leases offered by Defendants are higher than the monthly payments on the merchants' existing leases.

19. To induce merchants to sign the new equipment leases, Defendants' agents claim that the merchants' current terminals are outdated or incompatible with Defendants' services, or that the new terminals are a necessary part of Defendants' services. Defendants' agents further claim that

Defendants will pay off the balances of the merchants' existing leases. The agents also claim that, even with the new higher lease payments, merchants will save money on processing services because of Defendants' low discount rate.

20. Defendants' sales agents ask the merchants to sign documents that include a Merchant Application and Agreement (Processing Agreement) and a 48-month Non-Cancellable Lease for equipment. In numerous instances, the sales agents do not leave copies of these documents with the merchants and do not show merchants the last four pages of the Processing Agreements, which consist of fine print disclosures.

21. In fact, there is a "middleman" in the card processing transaction. Merchants' payment processing is actually done by a third-party processor, not defendants. In numerous instances, merchants who use Defendants' services are charged an additional processing rate, called a surcharge, for certain types of card transactions. These surcharges are an additional percentage of the transaction amount and are described in the fine print pages that many merchants do not see at the time of signing.

22. In numerous instances, merchants who use Defendants' services are also charged miscellaneous fees that appear as "other fees" on merchants' statements. These "other fees" are not disclosed or are inadequately disclosed.

23. In numerous instances, Defendants do not buy out the merchants' previous equipment leases, and merchants must pay the balances on their previous leases – which can be thousands of dollars – or make lease payments for two terminals, one of which they do not use.

24. As a consequence, many merchants contact Defendants through Defendants' customer service department. Defendants' customer service phone number is answered by employees who

claim not to have any authority and who are unable or unwilling to transfer merchants to anyone who can assist them. Merchants are transferred to voice mail or are promised return calls that are not made.

25. Many merchants ultimately cancel the processing agreements that Defendants induced them to sign. In such instances, merchants are charged substantial cancellation fees that are described in the fine print pages that many merchants do not see at the time of signing or that are otherwise inadequately disclosed.

26. In numerous instances, merchants have complained to Defendants about their practices and also filed complaints with Better Business Bureaus and state attorneys general that have been forwarded to Defendants. Defendants have not generally refunded, reduced, or provided compensation for additional costs incurred by merchants.

PPI Defendants

27. PPI, McCarthy, and Rian (“PPI Defendants”) have continued the sales practices engaged in by the MPI Defendants described in Paragraphs 15 through 23 above.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations and omissions of material facts constitute deceptive acts or practices and are unlawful pursuant to Section 5(a) of the FTC Act. In addition, under Section 5(n) of the FTC Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. 15 U.S.C. § 45(n).

COUNT I

Deception - Misrepresentation Regarding Fees

29. In connection with the offering of credit and debit card processing goods or services, Defendants represent, expressly or by implication, that merchants who purchase the goods or services offered by Defendants will save money each month on their card processing expenses.

30. In truth and in fact, in numerous instances, merchants who purchase the goods or services offered by Defendants do not save money each month on their card processing expenses.

31. Therefore, the representations set forth in Paragraph 29 are false and misleading and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Deception - Failure to Disclose Additional Expenses

32. In connection with the offering of credit and debit card processing goods or services, Defendants represent, expressly or by implication, that merchants will be charged specific transaction fees and discount rates in connection with card processing services.

33. In numerous instances, Defendants have failed to disclose, clearly and conspicuously, that merchants will also be charged surcharges for certain kinds of card transactions, substantial fees if they cancel their processing agreements before 48 months elapse, and other fees.

34. The additional information, described in Paragraph 33, would be material to merchants in deciding whether to purchase Defendants' goods or services.

35. Defendants' failure to disclose clearly and conspicuously the material information set forth in Paragraph 33, in light of the representations made in Paragraph 32, constitutes deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

Deception - Misrepresentation Regarding Lease Buy-Outs

36. In connection with the offering of credit and debit card processing goods or services, Defendants represent, expressly or by implication, that Defendants will pay off the balances of the existing equipment leases of merchants who purchase the goods or services offered by Defendants.

37. In truth and in fact, in numerous instances, Defendants do not pay off the balances of the existing equipment leases of merchants who purchase the goods or services offered by Defendants.

38. Therefore, the representations set forth in Paragraph 36 are false and misleading, and constitute deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

Unilateral Modification of Contracts

39. In numerous instances, after merchants have signed Defendants' processing agreements and without the merchants' knowledge, Defendants have unilaterally modified the processing agreements by adding pages of fine print that contain provisions requiring merchants to pay substantial additional fees and surcharges.

40. Defendants then use these added pages to justify the fees or surcharges that the merchants have not agreed to but that are debited from merchants' deposit accounts.

41. Defendants' practices set forth in Paragraphs 39 and 40 cause substantial injury to merchants that is not reasonably avoidable by the merchants themselves and not outweighed by

countervailing benefits to merchants or competition.

42. Therefore, Defendants' practices, as set forth above, are unfair and violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COMMON ENTERPRISE

43. Defendants MPI, Vequity, and DMP have operated as a common business enterprise while engaging in the unfair and deceptive acts and practices alleged above in Paragraphs 29 through 42.

INJURY

44. Small businesses throughout the United States have suffered substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent relief by this Court, Defendants are likely to continue to injure merchants, reap unjust enrichment, and harm the public interest.

THE COURT'S POWER TO GRANT RELIEF

45. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including disgorgement and restitution, to prevent and remedy violations of any provision of law enforced by the Commission.

46. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

47. WHEREFORE, Plaintiff, the Federal Trade Commission, 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, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, and appointment of a receiver 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 other relief as the Court finds necessary and appropriate, including but not limited to rescission of contracts, 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 equitable relief as the Court may determine to be just and proper.

Dated October 2, 2007

s/ Mary T. Benfield
Mary T. Benfield
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Federal Trade Commission