

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CARDFLEX, INC., ET AL. a California Corporation,
et al.;

Defendants.

NO. 3:14-CV-397-MMD-GWF

[Proposed]

**STIPULATED
PERMANENT
INJUNCTION AND FINAL
ORDER AGAINST
DEFENDANTS CARDFLEX,
INC. , ANDREW PHILLIPS,
AND JOHN BLAUGRUND**

Plaintiff, the Federal Trade Commission (“FTC” or the “Commission”), has filed its Complaint against CardFlex, Inc. (“CardFlex”), Blaze Processing, LLC, (“Blaze”), Mach 1 Merchanting, LLC (“Mach 1”), Andrew Phillips, John Blaugrund, Shane Fisher and Jeremy Livingston (“Defendants”), 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 FTC and Settling Defendants stipulate to the entry of this Order to resolve all matters in dispute in this action between them.

THEREFORE, it is ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated 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. Settling Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling Defendants admit the facts necessary to establish jurisdiction.
4. Settling Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Settling Defendants further waive and release any claim they may have against Plaintiff, its employees, representatives, or agents.
5. Settling Defendants waive any claim that they 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 agree to bear their own costs and attorney's fees.
6. This Order reflects the negotiated agreement of the parties. The Commission and the Settling Defendants have agreed that entry of this Order settles and resolves all matters of dispute between them arising from the conduct alleged in the Commission's Complaint as of the date of entry of this 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. “Card-Not-Present Transaction” means a debit or credit card transaction whereby the Person’s debit or credit card is not physically swiped, scanned, or imprinted.

3. “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.

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

5. “Client” means any Person (a) who obtains, directly or indirectly, from any Settling Defendant a merchant account that enables the acceptance of payments from a consumer for goods, services, or charitable donations; or (b) for whom any Settling Defendant acts as a Sales Agent, either directly or indirectly.

6. “Corporate Defendant” means CardFlex, Inc. and its successors and assigns.

7. “Covered Client” means any Client engaged in any of the following types of businesses: (a) Outbound Telemarketing; (b) credit card

protection or identity theft services; (c) timeshare resale services; (d) Membership Clubs; (e) medical discount membership plans; or (f) mortgage reduction services.

8. “Defendant” and “Defendants” means CardFlex, Blaze, Mach 1, Andrew M. Phillips, John S. Blaugrund, Shane Fisher and Jeremy Livingston, individually, collectively, or in any combination.

9. “For-Profit Charitable Telemarketing” means a plan, program, or campaign which is conducted (a) by a for-profit entity on behalf of a bona fide charitable institution qualified to receive tax-deductible contributions; (b) in order to induce the purchase of goods or services or a charitable contribution; and (c) through telephone calls that are initiated by the entity engaged in telemarketing as opposed to the donor.

10. “High Risk Client” means any Client that (a) on an annual basis, whether measured by a single merchant account or by the aggregate of all merchant accounts held by the Client, processes more than fifteen percent (15%) Card-Not-Present Transactions and more than two hundred thousand dollars (\$200,000) in total Card-Not-Present Transactions; (b) is engaged in the sale of goods or services with a Negative Option Feature when the Client processes more than two hundred thousand dollars (\$200,000) in total sales transactions on an annual basis, whether measured by a single merchant account or by the aggregate of all merchant accounts held for or by the Client; (c) is engaged in For-Profit Charitable Telemarketing; or (d) is a Covered Client.

11. “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.

12. “Individual Settling Defendants” means Andrew M. Phillips (“Phillips”) and John S. Blaugrund (“Blaugrund”).

13. “iWorks” means the entities and individuals named as defendants in *FTC v. Jeremy Johnson, et al.* No. 2:10-cv-2203-RLH-GWF (D. Nev., filed December 21, 2010), and Big Bucks Pro, Inc.; Blue Streak Processing, Inc.; Bottom Dollar, Inc.; Bumble Marketing, Inc.; Business Loan Success, Inc.; Cutting Edge Processing, Inc.; Diamond J. Media, Inc.; Ebusiness First, Inc.; Ebusiness Success, Inc.; Ecom Success, Inc.; Excess Net Success, Inc.; Fiscal Fidelity, Inc.; Funding Search Success, Inc.; Funding Success, Inc.; GG Processing, Inc.; GGL Rewards, Inc.; Hooper Processing, Inc.; Internet Fitness, Inc.; Net Business Success, Inc.; Net Commerce, Inc.; Net Discounts, Inc.; Net Fit Trends, Inc.; Network Agenda, LLC; Optimum Assistance, Inc.; Pro Internet Services, Inc.; Razor Processing, Inc.; Simcor Marketing, Inc.; Summit Processing, Inc.; Unlimited Processing, Inc.; Xcel Processing, Inc., and any other entity owned or controlled by Jeremy Johnson.

14. “Membership Club” means any arrangement whereby a Person who purportedly agrees to the arrangement (i.e., member) receives specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit card protection, legal services, weight loss programs, and discounts on goods and services.

15. “Money Making Opportunities” means any good or service represented to enable or to assist consumers in: (a) earning income through a work-from-home business opportunity; (b) obtaining training or education on how to establish a business or earn money or other consideration through a business; (c) obtaining employment for an upfront fee; or (d) obtaining government grants or other such government income, benefits, or scholarships.

16. “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.

17. “Outbound Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of goods or services in which the

telephone calls are initiated by the Person engaged in telemarketing as opposed to the customer, except that Outbound Telemarketing shall not include For-Profit Charitable Telemarketing.

18. “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.

19. “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 contribution.

20. “Person” means any natural person or any entity, corporation, partnership, or association of persons.

21. “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.

22. “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.

23. “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.

24. “Settling Defendants” means Corporate Defendant, Phillips, and Blaugrund individually or collectively.

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

26. The words “and” and “or” shall be understood to have both conjunctive and disjunctive meanings.

I.
PROHIBITION AGAINST PAYMENT PROCESSING OR ACTING AS AN ISO
OR SALES AGENT

IT IS ORDERED that Corporate Defendant, Phillips, and Blaugrund, whether acting directly or indirectly, are permanently restrained and enjoined from Payment Processing or acting as an ISO or Sales Agent for any Client (a) offering to sell, selling, promoting, or marketing any Money Making Opportunity, or (b) listed on the MasterCard Member Alert to Control High-risk (Merchants) (MATCH) list for any of the following reasons: excessive chargebacks or fraud, identification as a Questionable Merchant per the MasterCard Questionable Merchant Audit Program, merchant collusion, illegal transactions, or identity theft.

II.
PROHIBITION AGAINST ASSISTING AND FACILITATING

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants’ officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order,

whether acting directly or indirectly, in connection with Payment Processing or acting as an ISO or Sales Agent, are permanently restrained and enjoined from assisting or facilitating any Client's tactics to avoid 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.

III.

REASONABLE SCREENING OF PROSPECTIVE HIGH RISK CLIENTS

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from Payment Processing or acting as an ISO or Sales Agent for any prospective High Risk Client without first engaging in a reasonable screening of the prospective High Risk Client to determine whether the prospective High Risk Client's business practices are, or are likely to be, deceptive or unfair within the meaning of Section 5 of the FTC Act, or violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. Such reasonable screening shall include, but not be limited to:

- A. Obtaining from each prospective High Risk Client, including the principal(s) and controlling Person(s) of the entity, any Person(s) with a majority ownership interest in the entity, and any corporate name, trade

name, fictitious name or aliases under which such person(s) conduct or have conducted business:

1. A description of the nature of the prospective High Risk Client's business, including describing the nature of the goods and services sold and methods of sale, for which the prospective High Risk 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 High Risk Client has marketed during the preceding two years or intends to market the goods and services for which the prospective High Risk Client seeks Payment Processing services;
3. Each physical address at which the prospective High Risk Client has conducted business during the preceding two years or will conduct the business(es) identified pursuant to subsection (1) of this Section III.A;
4. The name and address of every bank and Payment Processor used by the prospective High Risk Client during the preceding two years, and all merchant identification numbers used by any such banks or Payment Processors in connection with the prospective High Risk Client;
5. The prospective High Risk Client's past Chargeback Rate and Total Return Rate for the preceding three (3) months, or for the preceding six (6) months if the High Risk Client is engaged in the

sale of products or services with a Negative Option Feature, and estimates of future Chargeback Rates and Total Return Rates;

6. The names of trade and bank references; and
 7. Whether the prospective High Risk Client, including the principal(s) and controlling Person(s) of the entity, any Person(s) with a majority ownership interest in the entity, and any corporate name, trade name, fictitious name or aliases under which such person(s) conduct or have conducted business:
 - i. Has been placed in a payment card association's chargeback monitoring program during the preceding two years; or
 - ii. Has ever been the subject of legal action taken by the Commission or any other state or federal law enforcement agency relating to consumer protection;
- B. Taking reasonable steps to assess the accuracy of the information provided pursuant to Sections III.A of this Order, including but not limited to: Obtaining and reviewing representative samples of current marketing materials, including Internet websites, for each good or service related to the offer for which Settling Defendants would provide the prospective High Risk Client with Payment Processing, ISO, or Sales Agent services, to determine whether the prospective High Risk Client is engaged in any of the following acts or practices, in which case Settling Defendants shall not provide Payment Processing or act as an ISO or Sales Agent for the prospective High Risk Client:
1. Failing to clearly and conspicuously disclose all products and services

that are sold in conjunction with the offered product or service, and the total cost to purchase, receive, or use, any products or services that are the subject of the sales offer;

2. Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sales offer;
3. Failing to clearly and conspicuously disclose all material terms and conditions of an offer, including, for Negative Option offers, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charges will be submitted for payment, and the specific steps the customer must take to avoid the charge(s);
4. Misrepresenting, expressly or by implication, any material aspect of the prospective High Risk Client's refund, cancellation, exchange, or repurchase policies; and
5. Causing billing information to be submitted for payment without the customer's express authorization.

Provided, however, that this Section III shall not prohibit Blaugrund from employment with any Person that provides Payment Processing or acts an ISO or a Sales Agent as a function of its business operations, or apply to Blaugrund in his role as an employee of any such Person (excluding Corporate Defendant or Phillips), so long as Blaugrund is not a principal or controlling person of such Person.

IV.
MONITORING OF HIGH RISK CLIENTS

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with Payment Processing or acting as an ISO or Sales Agent, are permanently restrained and enjoined from:

- A. Failing to monitor the sales activity of all current Clients to identify Clients that should be designated as High Risk Clients requiring additional screening pursuant to Section III of this Order, and for those clients that become designated as High Risk, failing to complete the reasonable screening process described in Section III of the Order within a one month period;
- B. Failing to monitor each High Risk Client's transactions to determine whether the High Risk Client is engaged in practices that are deceptive or unfair in violation of Section 5 of the FTC Act. Such monitoring shall include, but not be limited to, regularly reviewing High Risk Clients' Internet websites, regularly reviewing each High Risk Client's Chargeback Rates, Total Return Rates, and reasons provided for these rates, as well as examining any unusual or suspect transaction patterns, values, and volume;
- C. Failing to calculate and update at least on a monthly basis for each High Risk Client the Chargeback Rate and Total Return Rate. The Chargeback Rate and Total Return Rate shall be calculated separately for each payment mechanism processed, including ACH Debits, credit card transactions, RCCs, and RCPOs. For any High Risk Client with multiple processing

accounts, the calculation of the Chargeback Rate and Total Return Rate shall be made for each of the High Risk Client's individual processing accounts, and in the aggregate for each High Risk Client;

- D. Failing to immediately stop processing sales transactions and, as soon as practical but in no more than 5 days, close all processing accounts for:
1. Any Covered Client whose Total Return Rate exceeds two and one-half percent (2.5%) and whose total number of ACH Debit, RCC, or RCPO returned transactions in any month exceeds forty (40); and
 2. Any Covered Client whose monthly Chargeback Rate exceeds one percent (1%) and whose total number of chargebacks exceeds forty (40) per month in two of the past six months;
- E. Failing to immediately conduct a reasonable investigation of the cause of Total Return Rate or Chargeback Rates for:
1. Any High Risk Client, excluding Covered Clients, whose Total Return Rate exceeds two and one-half percent (2.5%) and whose total number of ACH Debit, RCC, or RCPO returned transactions in any month exceeds forty (40); and
 2. Any High Risk Client, excluding Covered Clients, whose monthly Chargeback Rate exceeds one percent (1%) and whose total number of chargebacks exceeds forty (40) in two of the past six months;
 3. Reasonable investigation includes, but is not limited to: verifying and updating the truth and accuracy of information gathered in compliance with Section III of this Order and any other advertising of the High Risk Client; confirming that the High Risk Client has

obtained required consumer authorizations for the transactions; contacting financial institutions and Better Business Bureaus to gather detailed information, including complaints and other relevant information, regarding the High Risk Client; reviewing from an IP address that is not associated with Settling Defendants the Internet websites used by the High Risk Client to market its goods and services; searching publicly available sources for legal actions taken by the Commission or other state or federal law enforcement agencies against the High Risk Client; and conducting “test” shopping to determine the High Risk Client’s sales practices, where possible;

4. Within sixty (60) days of commencing the investigation, Settling Defendants shall stop processing sales transactions and close all processing accounts for any investigated High Risk Client unless Settling Defendants draft a written report establishing facts that demonstrate, by clear and convincing evidence, that the High Risk Client’s business practices related to the offer(s) for which Settling Defendants provide Payment Processing are not deceptive or unfair in violation of Section 5 of the FTC Act or in violation of the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310.
- F. Failing to immediately stop processing sales transactions and close all processing accounts for any High Risk Client that Settling Defendants know or should know is engaged in tactics to avoid 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.

Provided, however, that this Section IV shall not prohibit Blaugrund from employment with any Person that provides Payment Processing or acts an ISO or a Sales Agent as a function of its business operations, or apply to Blaugrund in his role as an employee of any such Person (excluding Corporate Defendant or Phillips), so long as Blaugrund is not a principal or controlling person of such Person.

Nothing in this Section IV shall be read to insulate Settling Defendants from liability for a violation of Section 5 of the FTC Act or any provision of this Order.

V.

MONETARY JUDGMENT AND PARTIAL SUSPENSION

- A. Judgment in the amount of \$3,298,298.13 is entered in favor of the Commission against Corporate Defendant and Phillips, jointly and severally, as equitable monetary relief.
- B. Corporate Defendant and Phillips are ordered to pay the Commission \$150,000 (One Hundred and Fifty Thousand Dollars). Defendants have tendered the \$150,000 to the Clerk of the Court for deposit into the registry account, pursuant to Local Rule 67-1. Upon acceptance of this Final Order by the Court, Defendants shall within five (5) days request

from this Court an Order directing disbursement of the funds held in the court registry to the Commission, in accordance with instructions previously provided by a representative of the Commission.

- C. Defendant Phillips shall, within ten (10) days from entry of this Order, unless otherwise agreed to in writing by the Commission and R.L. Spear Co., the Liquidator appointed in Section VI below, shall turnover to the Liquidator the following items (the "Personal Property"):
1. Each piece of jewelry described in Appendix A attached to this Order, with a total insured value of One Million, One Hundred Sixty-Five Thousand, Eight Hundred Forty-Two Dollars (\$1,165,842), as described in Andrew Phillips and Susan Phillips' Chubb Personal Insurance Valuable Articles Coverage Detail, Policy Number 1372144403, as of April 6, 2014, provided in a December 9, 2014 email to FTC staff.
 2. The Ford F-350 Pick-Up Identified on The Financial Statement of Phillips;
 3. The tables from Wyland Galleries described in the December 9, 2014 email addressed to FTC staff; and
 4. The six and six-tenth ounces (6.6) of gold coins described in the January 8, 2015 email addressed to FTC staff.
- D. Defendant Phillips shall cooperate fully with the Liquidator and take such other steps as the Liquidator may require to transfer to the Liquidator the Personal Property. Prior to transferring possession of the Personal Property, Defendant Phillips shall maintain and take no action to diminish

the value of the Personal Property. Defendant Phillips also shall cause existing insurance coverage for the Personal Property to remain in force until the Personal Property is transferred to the Liquidator.

- E. Upon completion of the requirements in Subsections B – D, the remainder of the judgment is suspended, subject to Subsections F – M below.
- F. The Commission’s agreement to the suspension of part of the judgments against Corporate Defendant and Phillips is expressly premised upon the truthfulness, accuracy and completeness of the sworn financial statements and related documents (collectively, “financial representations”) submitted to the Commission, namely:
1. The Financial Statement of Phillips signed on December 17, 2014, including the attachments;
 2. The Financial Statement of Corporate Defendant signed by Andrew Phillips, CEO on December 18, 2014, including the attachments; and
 3. The December 9, 2014, January 5, 2015, and March 19, 2015 e-mail messages describing Andrew Phillips’ assets and liabilities.
 4. The January 8, 2015 email message describing Andrew Phillips’ gold coins.
- G. The suspension of the judgment will be lifted as to Corporate Defendant and Phillips if, upon motion by the Commission, the Court finds that Corporate Defendant or Phillips failed to disclose any material asset, materially misstated the value of any asset, or made any other material

misstatement or omission in the financial representations submitted to the Commission identified above.

- H. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that defendant 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.
- I. Corporate Defendant and Phillips relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- J. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent proceeding by or on behalf of the Commission to enforce its rights to any payment or monetary judgment pursuant to this Order in a nondischargeability complaint in any bankruptcy case.
- K. 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.
- L. Corporate Defendant and Phillips acknowledge that the Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which they 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.

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

VI.
APPOINTMENT OF LIQUIDATOR

IT IS FURTHER ORDERED that R.L. Spear Co. ("Liquidator") is appointed as liquidator for the Personal Property described in Section V(B). The Liquidator's responsibilities are as follows:

A. The Liquidator is directed to sell the Personal Property at public auction. The Liquidator is authorized to incur reasonable and necessary costs in selling the Personal Property at public auction, including the costs associated with: taking possession of the Personal Property, appraising the Personal Property, insuring the Personal Property, advertising the auction, and securing the Personal Property until it can be sold. The

Liquidator shall be compensated from the proceeds of the sale of the Personal Property in the form of a buyer's premium that will be no more than thirteen percent (13%) of the final sale price.

- B. Within five (5) days after the auction and sale has been completed, the Liquidator shall submit to the Commission a written invoice describing the total sales price, incurred costs, and the total buyer's premium. If the incurred costs do not exceed Twelve Thousand Dollars (\$12,000), the Liquidator shall transfer to the Commission the net proceeds of the auction within five (5) days of submitting the written invoice. If the incurred costs exceed \$12,000, the Commission shall have five (5) days to review and object to additional incurred costs above \$12,000. Unless the Commission provides notice to the Liquidator of an objection within five (5) days of receipt of the invoice, the Liquidator shall transfer to the Commission the net proceeds of the auction. If the Commission objects to the additional incurred costs, the Commission shall promptly file with the Court a copy of the written invoice of incurred costs and the basis for its objection, the Liquidator may file with the Court the basis for its additional incurred costs. The Court in its sole discretion will determine those additional incurred costs for which the Liquidator shall be reimbursed.

VII.
PROHIBITION ON USE OF CONSUMER ACCOUNT INFORMATION

IT IS FURTHER ORDERED that Settling Defendants, whether acting directly or through any Person, subsidiary, division, or other device, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from iWorks 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 Settling Defendant prior to entry of this Order;
and
- B. Retaining such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order.

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.

VIII.
COOPERATION

IT IS FURTHER ORDERED that Settling Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Settling Defendants must provide truthful and complete information, evidence, and testimony. Settling Defendants must appear and must cause Corporate Defendant's officers, employees, representatives, or agents to appear for interviews, discovery,

hearings, trials, and any other proceedings that Commission representative may reasonably request upon five (5) days written notice, or other reasonable notice, at such places and times as Commission representative may designate, without the service of a subpoena.

IX.
ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Settling Defendants obtain acknowledgments of receipt of this Order:

- A. Each Settling Defendant, within seven (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 five (5) years after entry of this Order, each Individual Settling Defendant, for any business that Individual Settling Defendant, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, and Corporate Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC members and managers; (2) all employees, agents, and representatives who have decision-making authority with respect to the 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 (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which Settling Defendants delivered a copy of this Order, that Settling Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

X.
COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Settling Defendants make timely submissions to the Commission:

- A. One (1) year after entry of this Order, each Settling Defendant must submit a compliance report, sworn under penalty of perjury:
1. Each Settling Defendant must:
 - a. Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Settling Defendant;
 - b. Identify all of that Settling 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 goods and services offered, and the involvement of any other Defendant (which Settling Defendants must describe if they know or should know due to their own involvement);
 - d. Describe in detail whether and how that Defendant is in compliance with each Section of this Order; and

- e. Provide a copy of each Order Acknowledgement obtained pursuant to this Order, unless previously submitted to the Commission;
2. Additionally, each Individual Settling Defendant must:
 - a. Identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;
 - b. Identify all business activities, including any business for which Individual Settling Defendant performs services whether as an employee or otherwise and any entity in which Individual Settling Defendant has any ownership interest; and
 - c. Describe in detail Individual Settling Defendant's 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, Settling Defendants must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:
1. Each Settling Defendant must report a change in:
 - a. Any designated point of contact;
 - b. The structure of Corporate Defendant or any entity that Settling Defendants have any ownership interest in or control directly or indirectly 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, each Individual Settling Defendant 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 Individual Settling Defendant performs services whether as an employee or otherwise and any entity in which Individual Settling Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.
- C. Each Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Settling Defendant within fourteen (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. CardFlex, Inc.

XI.
RECORDKEEPING

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

- A. Accounting records showing the revenues from all goods or services sold to High Risk Clients;
- B. Personnel records showing, for each person involved in compliance with Sections II and III of this Order, 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. Records of all refund and Chargeback requests made with respect to High Risk Clients, 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.

XII.
COMPLIANCE MONITORING

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

- A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, Settling Defendants 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 Settling Defendants. Corporate Defendant must permit representatives of the Commission to interview any employee or other person affiliated with Corporate Defendant 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 Settling Defendants or any individual or entity affiliated with Settling Defendants, 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.

XIII.
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 _____, 2015.

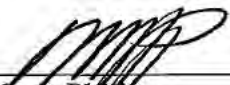
HONORABLE MIRANDA M. DU
United States District Judge

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 DEFENDANTS

Jeffrey D. Knowles
Ellen T. Berge
Counsel for CardFlex, Andrew Phillips, and John Blaugrund

Dated: _____



Andrew Phillips
Individually and as an Officer of CardFlex:

Dated: 3/26/15



John Blaugrund

Dated: 3/26/2015

FOR THE FEDERAL TRADE COMMISSION

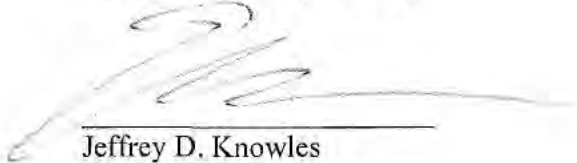
JONATHAN E. NEUCHTERLEIN
General Counsel

Dated: _____

Benjamin R. Davidson
bdavidson@ftc.gov
Karen S. Hobbs
khobbs@ftc.gov
FEDERAL TRADE
COMMISSION 600
Pennsylvania Ave., NW, H-
286 Washington, D.C. 20580
(202) 326-3055 (Davidson)
(202) 326-3587 (Hobbs) Fax:
(202) 326-3261

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FOR THE DEFENDANTS



Jeffrey D. Knowles
Ellen T. Berge
Counsel for CardFlex, Andrew Phillips, and John Blaugrund

Dated: 3-27-15

Andrew Phillips
Individually and as an Officer of CardFlex:

Dated: _____

John Blaugrund

Dated: _____

FOR THE FEDERAL TRADE COMMISSION

JONATHAN E. NEUCHTERLEIN
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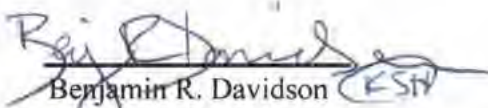
Dated: _____

John Blaugrund

Dated: _____

FOR THE FEDERAL TRADE COMMISSION

JONATHAN E. NEUCHTERLEIN
General Counsel



Benjamin R. Davidson

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(202) 326-3587 (Hobbs) Fax:
(202) 326-3261

Dated: 3/27/15

FOR THE LIQUIDATOR

Dated: 1/21/15



R.L. Spear Co.

Appendix:

Description of Jewelry	Insured Value
Man's Stainless Steel 14 Karat Yellow Gold Breitling 1884 Watch	\$7,542
Man's 750 Gold Diamond Presidential Design Oyster Perpetual Day-Date Rolex Watch, Superlative Chronometer	\$27,725
Man's Stainless Steel 18 Karat Yellow Gold Oyster Perpetual Date Rolex Watch, Submariner, #16613	\$10,766
Lady's Stainless Steel and Gold Diamond and Ruby Chopard Watch. Happy Sport, #802609-8237	\$7,028
One Pair, Lady's Marked 14 Karat Gold Tourmaline Earrings, Light Pink Stones	\$1,095
Lady's Marked 750 18 Karat Yellow Gold Diamond Chopard Pendant	\$4,091
Lady's 18 Karat Yellow Gold Diamond Bracelet, Contemporary Style	\$7,888
Lady's Marked 750 14 Karat Yellow Gold Diamond Bracelet, Custom Cast, Traditional Style with Bright Finish, Pave	\$36,388
Lady's Diamond Bracelet with Five Charms	\$103,802
Pair of Lady's Marked 18 Karat Yellow Gold Diamond Earrings, Contemporary with Bright Finish (Hoop)	\$5,268
Man's Marked 750 18 Karat Rose Gold Jager Le Coultre Watch, with Black Leather Strap, Mater Grand Revell	\$51,573
Man's Marked Stainless Steel Raymond Weil Tango Sport Wristwatch, with Rubber Strap. V540690	\$1,482
Lady's Marked 18 Karat Yellow Gold Diamond Necklace, Traditional with Bright Finish	\$109,960
Lady's Marked 750 18 Karat Yellow Gold Multi Gemstone Ring, Vintage Style with Bark Finish	\$9,429
Pair of Lady's Marked 750/18k Yellow Gold Diamond Earrings with Round Brilliant Cut Diamonds	\$43,135
Lady's 18 Karat Yellow Gold Diamond "Peace" Pendant	\$78,449
Lady's 18 Karat Yellow Gold Diamond Ring Weighing 4.6 Grams	\$270,725
Lady's Marked "750/Chopard" 18 Karat Yellow Gold Diamond Necklace. Weights 4.0 Grams. (Connects with Peace Symbol)	\$163,986
Lady's Gold and Diamond Stirrup Pendant	\$32,414
Breitling 1844 Aviator Watch, Stainless Steel	\$5,789
Breitling 1844 Aviator Watch, Gold	\$28,941
Breitling 1844 Aviator Watch, Stainless Steel with White Face	\$5,789
Evicta Aviator Watch, Black Strap	\$695
One Lady's Sapphire and Diamond Bracelet	\$33,572
Multi Color Necklace	\$53,251

Detachable 50 Carat Plus Pendent to Necklace	\$35,424
Sapphire Bracelet	\$7,409
Multi Color Earrings	\$22,226