

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Judge _____

ELECTRONIC PAYMENT TRANSFER, LLC)

)

Plaintiff,)

)

1:16-cv-_____

v.)

)

FEDERAL TRADE COMMISSION, and)

CITYWIDE BANKS, a Colorado corporation)

)

Defendants.)

)

COMPLAINT

Electronic Payment Transfer, LLC, (“EPT”), by and through its attorneys, the KROB LAW OFFICE, LLC, hereby complains against Defendants as follows:

Plaintiff brings this action to obtain preliminary and permanent injunctive relief and other equitable relief for Defendants’ failure to provide Plaintiff information regarding a *Subpoena Duces Tecum* served on one defendant by the other regarding potentially highly sensitive financial information related to the Plaintiff.

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337(a) because this action arises under and considers the powers of a federal agency that regulates commerce.

2. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2), (b)(3), (c)(2), because Defendant Citywide Banks resides in Colorado and a substantial part of

the events or omissions giving rise to the claim occurred in Colorado as the bank records at issue are located in Colorado.

II. PARTIES

3. Electronic Payment Transfer, LLC is a Colorado limited liability company with its principal place of business in Centennial, Colorado.

4. Defendant Federal Trade Commission (“Defendant FTC”) is an independent agency of the United States Government created by statute and operating across all jurisdictions of the United States of America.

5. Defendant Citywide Banks (“Defendant Citywide”) is a Colorado corporation with its principal place of business in Aurora, Colorado.

III. GENERAL ALLEGATIONS

6. Defendant FTC and its investigative powers are governed by statutes and regulation, including but not limited to 15 U.S.C §§ 46 and 49, 16 § C.F.R. 2.7.

7. Defendant FTC initiated an investigation into a third-party to this suit approximately five years ago.

8. In the course of that investigation Defendant FTC has requested from Plaintiff and its related companies documents, responses to interrogatories and depositions.

9. In response to these requests, Plaintiff and its related companies have produced tens of thousands of pages of documents to Defendant FTC.

10. According to Plaintiff's bank, and unbeknownst to Plaintiff, Defendant FTC has now subpoenaed Plaintiff's banking records entrusted to Defendant Citywide Bank.

11. On Friday, June 24, 2016, Defendant Citywide sent Plaintiff a letter to advise Plaintiff that Defendant FTC had served Defendant Citywide with a *Subpoena Duces Tecum* for "records belonging to [Plaintiff] Electronic Payment Transfer LLC."

12. Defendant Citywide further stated that "unless prevented from doing so" it would "deliver these records to the Federal Trade Commission by 10:00 a.m. on June 28, 2016," less than two business days from the time Defendant Citywide notified Plaintiff of the subpoena.

13. The letter did not include a copy of the *Subpoena Duces Tecum*.

14. On Monday morning, June 27, 2016, Plaintiff contacted Defendant Citywide's counsel by phone and by e-mail requesting a copy of the *Subpoena Duces Tecum* so Plaintiff could determine whether it was entitled to prevent disclosure of the records.

15. After several discussions, Defendant Citywide's counsel indicated he would forward Plaintiff's attorney a copy of the subpoena.

16. Having not received it, Plaintiff's attorneys again contacted Defendant Citywide's counsel, who assured Plaintiff that they would receive the subpoena.

17. On Monday, June 27, 2016, Plaintiff's attorney also contacted Defendant FTC by email, requesting a copy of the subpoena it had served on Defendant Citywide related to Plaintiff's records.

18. Plaintiff has yet to receive a copy of the *Subpoena Duces Tecum*. As a result, Plaintiff does not know (1) precisely what information is being requested; (2) the basis for such request; (3) the case or authority under which the subpoena was issued; or (4) any other information regarding the subpoena.

CLAIM 1- REQUEST FOR INJUNCTION RELIEF

19. Above paragraphs are hereby incorporated.

20. Plaintiff has certain interests in its personal banking records that are entitled to certain protections under some conditions.

21. Without a copy of the subpoena, Plaintiff cannot determine the nature and extent of the protections afforded to the subpoenaed information.

22. If the materials are produced without the appropriate protections to which Plaintiff may be entitled, said materials may be further disseminated resulting in immediate, irreparable and permanent harm to Plaintiff.

23. Neither Defendant will suffer any harm if the court enjoins dissemination of the requested information until (1) a copy of the subpoena has been provided to Plaintiff; (2) Plaintiff has had the opportunity to present to the Court its request for protection; (3) the Court has entered an order protecting Plaintiff from irreparable harm and other damage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff EPT, pursuant to the Court's equitable powers, requests that the Court:

Enter a permanent injunction to prevent Defendant Citywide from disclosing any information related to Plaintiff in response to Defendant FTC's *Subpoena Duces Tecum* or limiting such disclosure as the Court may find appropriate.

DATED this 28th day of June, 2016.

/s/Scotty P. Krob

Scotty P. Krob

Nathan L. Krob

KROB LAW OFFICE, LLC

8400 E. Prentice Avenue, Penthouse

Greenwood Village CO 80111

Telephone: (303) 694-0099

Facsimile: (303) 694-5005

scott@kroblaw.com

nathan@kroblaw.com

COUNSEL for

ELECTRONIC PAYMENT TRANSFER, LLC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Electronic Payment Transfer, LLC

(b) County of Residence of First Listed Plaintiff Arapahoe, Colorado
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Krob Law Office, LLC - Scotty P. Krob
8400 E. Prentice Avenue, Penthouse, Greenwood Village, CO 80111
(303) 694-0099

DEFENDANTS

Federal Trade Commission
Citywide Banks

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

FTC: Michelle Chua (202) 326-3248
Citywide Banks: Duncan E. Barber (720) 488-5432

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input checked="" type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Section 49, 16 C.F.R. Section 2.7

Brief description of cause:
Enjoin disclosure of financial documents

AP Docket

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

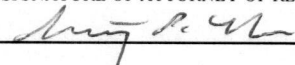
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE: 06/28/2016 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____