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**UNITED STATES DISTRICT COURT**
**DISTRICT OF ARIZONA**

**Federal Trade Commission**,

Plaintiff,

v.

**Electronic Payment Solutions of America, Inc., et al.**,

Defendants.

No. CV-17-02535-PHX-SMM

**FTC's Motion for Summary Judgment Against Defendants Electronic Payment Systems, LLC, Electronic Payment Transfer, LLC, John Dorsey, and Thomas McCann**

**Oral Argument Requested**

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# FTC'S MOTION FOR SUMMARY JUDGMENT

## Introduction

This case is about defendants' participation in, and assistance and facilitation of, credit card laundering. This laundering allowed fraudsters to steal from consumers—consumers like Birdie Williams, a resident of Madison, Alabama in her 70s. This Motion will cover myriad issues of fact and law, but by way of introduction, Ms. Williams' story is an instructive case study that touches on every aspect of this case.

In August 2012, Birdie Williams's home phone rang. The caller said his name was Eric Brown and that he worked for a company called Money Now Funding. Ms. Williams had never heard of Money Now Funding. Mr. Brown told Ms. Williams that Money Now Funding was looking for a new sales agent in her area who could contact local small business about loans and credit card processing machines. He said she would receive $25 for each application filled out by a business, 4% of each loan that was processed, and 2% of the business's monthly credit card sales, as well as a $100 bonus just for signing up that day. Ms. Williams felt pressured to sign up, so she agreed to pay $499 for a website and business license to become a Money Now Funding agent. About a week later, Ms. Williams received another call. This time, the caller, Clinton Fossee, said he was the owner of Money Now Funding, which he claimed was a $195 million per year business. He told Ms. Williams that his company had bought lists of small businesses that could not qualify for loans from the big banks—he called them "leads." Mr. Fossee reiterated what Mr. Brown had said about how Ms. Williams would be paid for businesses she referred to Money Now Funding for loans, and added that Ms. Williams's monthly income would average between $3,000 and $3,500 within six months. Then he sold her 1,000 "leads" for $7,000. Ms. Williams signed a credit card authorization form from a company called "Elite Marketing Strategies." But none of the callers' promises came true—Ms. Williams never received anything in return for her investment. After realizing that Money Now Funding was a scam, Ms. Williams disputed her credit card charges, but could not get a refund. *See generally* B. Williams Dec. (attached to the Statement of Facts ("SF")).

The fraudsters behind the Money Now Funding ("MNF") scam victimized Ms. Williams. In a case brought by the FTC in 2013, another court in this District held those fraudsters accountable for what they did to Ms. Williams and many other consumers. *See FTC v. Money Now Funding, LLC*, No. 2:13-cv-1583-ROS (D. Ariz. filed Aug. 5, 2013). But Ms. Williams' story, like that of many MNF victims, does not end with the MNF defendants. It also leads to the defendants in this case.

On an undated form labeled "Merchant Application" from Electronic Payment Systems, LLC ("EPS"), someone named Christopher Grimes applied for a merchant account in the name of "Elite Marketing Strategies." *See* Killingsworth Rep. Atts. Part 1—Subject Merch. Apps. Submitted to EPS, at FIMGEPS0379013-22 (attached to the Statement of Facts). Mr. Grimes was a low-level MNF employee, *see* SF 7, and a defendant in *FTC v. Money Now Funding*. The masterminds behind MNF commonly used low-level employees as nominee owners for fictitious MNF merchant accounts. *Id.* Merchant accounts allow merchants to take credit card payments from consumers. SF 2.

The original version of the Elite Marketing Strategies application said that it took payments 100% by "telephone order," and that it advertised "over the phone," took orders "over the phone," and had a "Warranty, Return, and Refund Policy" of "All Sales Final." *See* FIMGEPS0379013-15, *supra*. The application tersely described Elite's business as "marketing & advertising." *Id.* By the time EPS had approved Elite's application and sent it to EPS's acquiring bank, Merrick Bank, EPS had changed several of those details. The revised version of the application said that payments to Elite were 100% "manually keyed," meaning the merchant typed consumers' credit card numbers into a credit card terminal or online gateway. *See* Killingsworth Rep. Atts. Part 2—Subject Merch. Apps. Submitted to Merrick, at FIMGEPS0399987-91. It also provided average, low, and high "tickets," or sales totals, as well as average and high monthly processing volumes—figures missing from the original application. *Compare* FIMGEPS0379013 *with* FIMGEPS0399987. Finally, where once the application stated "All Sales Final," the "ll Sales Final" was whited out, and an "N/" inserted, resulting in a "Warranty, Return, and

Refund Policy" of "N/A." *Compare* FIMGEPS0379015 *with* FIMGEPS0399991.

EPS needed to edit merchant applications, including Elite's, because of industry policies requiring enhanced scrutiny of high-risk merchants such as telemarketers. For example, Visa considers telemarketers to be "High-Brand Risk" merchants that require direct registration with Visa, a burden not imposed on most other businesses, because telemarketing is prone to consumer fraud. Visa also requires additional risk monitoring, and imposes higher and more aggressive fines for exceeding chargeback monitoring thresholds for "High-Brand Risk" merchants. Consistent with industry policies on the high risk of telemarketing, Merrick Bank did not allow telemarketing merchants under its "Auto-Approval Program," which allowed its independent sales organizations ("ISOs")—including EPS—to open merchant accounts for processing before Merrick had reviewed and approved the applications. Sending an application to Merrick stating that payments were taken 100% by "telephone order" would have clearly indicated that the merchant was telemarketing, thereby triggering increased scrutiny. Erasing the consumer-unfriendly policy of "All Sales Final" would also make a merchant appear less suspect. By completing and editing merchant account applications, including Elite's, EPS helped ensure the accounts could start processing transactions without delay.

On July 24, 2012, EPS received the Elite Marketing Strategies merchant account application and checked Mr. Grimes' credit, as part of its routine merchant boarding process. SF 7; Killingsworth Rep. App. That same day, it also received an application for "BC Media Solutions," another "marketing & advertising" business in the Phoenix area, and checked the credit of its purported owner, Christopher Buchanan. *Id.* (Mr. Grimes's credit score was 544, considered a "very poor" credit score; Mr. Buchanan did not have a credit history—neither a good sign for supposed entrepreneurs applying to take consumers' credit card payments. *Id.*) Like Elite, BC Media was actually a fictitious MNF merchant. In fact, these two applications were also nearly identical to applications that EPS had processed for three other Phoenix-area "marketing & advertising" outfits on or around June 11-12, 2012—also fictitious MNF merchants. *Id.* They were also nearly

identical to the applications that EPS had received for thirteen more Phoenix-area "marketing & advertising" or "document prep" businesses processed around May 16-18, 2012—again, all fictitious MNF merchants. *Id.*; *see also* SF 11. EPS received every one of these 18 applications, and 22 more that followed them, from the office of its Phoenix-based sales agent, Jay Wigdore. SF 7. And EPS edited each of those applications before opening the accounts for processing and advancing the applications to Merrick. SF 12.

By the time the Elite Marketing Strategies application arrived at EPS, most of the 16 similar EPS accounts that preceded it had already started to go downhill. Their average sales tickets far exceeded what the merchants' applications had said they would be processing. Killingsworth Rep. App. (compare the "Average Ticket ($)" column on page 2 to the application "Ticket Sizes" column on page 8). Ten of the 16 processed their last sale in June or July 2012 before being shut down at the behest of Merrick; the rest were closed by September 2012. *Id.* Merrick repeatedly expressed its concerns about these accounts to EPS. SF 14.

Despite their similarity to each other and to a slew of failing accounts, EPS edited the Elite and BC Media applications and approved them for processing. According to EPS, its co-owner, Tom McCann, approved BC Media and co-owner John Dorsey approved Elite. SF 4. On the "Initial Risk Evaluation" form for Elite—a form that Dorsey would have reviewed—an EPS employee flagged that Elite shared an address with one of the failed May 2012 accounts, number 3000289. *See* Killingsworth Rep. Atts. Part 2—Subject Merch. Apps. Submitted to Merrick, at FIMGEPS0400028.

Now "Elite Marketing Strategies" was ready to take Birdie Williams' credit card payment of $7,000 for worthless "leads" when "Clinton Fossee" (a/k/a Clinton Rackley, a defendant in *FTC v. Money Now Funding*) sold them to her as part of the MNF scam. Not only that, but EPS helped ensure that Ms. Williams and victims like her could not get their money back through the chargeback process. EPS did so by distributing a form called "Certificate of Satisfactory Completion and Authorization," SF 8, which the MNF scammers had Ms. Williams sign, attesting that "all charges are accurate and have met

full expectation and satisfaction," on the very same day that Ms. Williams bought the leads, B. Williams Dec. Att. B. All told, MNF used "Elite Marketing Strategies" to collect $178,350 from MNF victims, Killingsworth Rep. App., all of which could have been prevented if EPS had not ignored clear warning signs of fraud and credit card laundering.

MNF's need to use many fictitious merchants to process its victims' payments was due to credit card industry safeguards that catch and close fraudulent merchant accounts—especially merchant accounts used by fraudulent telemarketers. As more and more consumers charge back their transactions, responsible acquiring banks and ISOs investigate and take action to stop fraud. Because of this, scammers often spread out their credit card transactions across many merchant accounts—a practice called load balancing—to avoid scrutiny. Load balancing, in turn, is accomplished through credit card laundering, which is the practice of processing credit card transactions for one merchant through the payment processing account of another merchant. It is strictly forbidden by the credit card networks (*e.g.* Visa, MasterCard), and is prohibited by the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.3(c).

MNF victimized Ms. Williams and many consumers like her, to be sure. But MNF could not have collected the victim money it received for its nonexistent services without credit card laundering. By enabling MNF to spread out its transactions across more than 40 merchant accounts, EPS created and prolonged MNF's ability to take payments by credit card, before MNF's accounts were all inevitably shut down. A single merchant account in MNF's own name would not have avoided detection long enough to steal much. But with EPS' help, MNF kept processing long after it should have been stopped.

Ms. Williams's story reveals the complex ecosystem surrounding the MNF fraud, which ties MNF together with Wigdore and the remaining defendants in this case: EPS (and its alter ego EPT, discussed herein), Dorsey, and McCann ("Defendants"). As complex as the world of credit card processing may be, Ms. Williams's story highlights the bottom line: Defendants directly participated in, and assisted and facilitated, credit card laundering, and real consumer victims lost substantial money because of it. Indeed,

MNF stole at least $7.3 million from their victims, and the FTC attributes more than $4.6 million of this loss to Defendants' credit card laundering activities. There is ample and undisputed evidence to show that Defendants have engaged in unfair acts or practices—specifically, credit card laundering—in violation of § 5(a) & (n) of the FTC Act (Count II), credit card laundering in violation of § 310.3(c)(2) of the TSR (Count III), and assisting and facilitating credit card laundering in violation of § 310.3(b) of the TSR (Count VI). The Court should grant summary judgment to the FTC.[1]

## Argument

When this Court denied EPS's recent motion for partial summary judgment, it recited numerous facts that form the basis for this lawsuit (Doc. 301). Other than the testimony of the FTC's expert witness, nothing else has been added to the record. The Court should now find that the undisputed material facts warrant granting summary judgment to the FTC on all remaining counts of the First Amended Complaint (Doc. 85).[2]

### I. EPS and EPT are Liable for Each Other's Violations of Law, and Dorsey and McCann are Liable for EPS and EPT's Violations of Law

Before turning to Defendants' liability for violating the FTC Act and the Telemarketing Sales Rule, there are two prefatory matters: First, the corporate defendants form a common enterprise, and thus their constituent companies may be held liable for each other's violations of law. Second, the individual defendants are each liable for the corporate defendants' violations of law.

[1] For more general summaries of the facts, *see* Doc. 212, at 1-3; Doc. 301 at 1-3. *See also* Doc. 275 and the FTC's Statement of Undisputed Facts (SF) filed with this motion.

[2] "The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court." *Lobster v. Sierra Pac. Power Co.*, 12 F. Supp. 2d 1105, 1108 (D. Nev. 1998). Summary judgment is appropriate, where, as here, "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A fact is 'material' if it might affect the outcome of a suit, as determined by the governing substantive law." *FTC v. Grant Connect, LLC*, 827 F. Supp. 2d 1199, 1211 (D. Nev. 2011). An issue is "genuine" only "if sufficient evidence exists such that a reasonable fact finder could find for the non-moving party." *Id.*

**A. EPS and EPT Form a Common Enterprise**

EPS and EPT constitute a "common enterprise." "Where corporate entities operate together as a common enterprise, each may be held liable for the deceptive acts and practices of the others." *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1105 (9th Cir. 2014) (citing *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1143 (9th Cir.2010)). The doctrine is based on equitable principles and is flexible enough to cover a wide range of circumstances in which the corporate form is being abused to circumvent enforcement of the FTC Act. Thus, when determining whether a common enterprise exists, "[t]he Court evaluates the pattern and frame-work of the whole enterprise." *FTC v. Grant Connect, LLC*, 827 F. Supp. 2d 1199, 1216 (D. Nev. 2011). Evidence of common enterprise includes: "common control; the sharing of office space and officers; whether business is transacted through a maze of interrelated companies; commingling of corporate funds and failure to maintain separation of companies; unified advertising; and evidence that reveals that no real distinction exists between the corporate defendants." *Id.*

Though "common enterprise is not an alter ego analysis," *id.* at 1218, alter egos are essentially what EPS and EPT are. EPS and EPT admit that they share the same office space, and that "Electronic Payment Systems, LLC and EPS are d/b/a's of EPT." SF 1. They also admit that EPS and EPT are controlled and owned by the same two principals, and are often referred to interchangeably as the same company. *Id.* There is no genuine dispute of material fact that EPS and EPT constitute a common enterprise. Accordingly, this Motion will refer to EPS and EPT collectively as "EPS."

**B. Dorsey and McCann are Liable for EPS's Conduct**

Dorsey and McCann are individually liable for EPS's conduct. An individual is personally liable for corporate violations of the FTC Act and subject to injunctive relief "if the FTC demonstrates that the individual defendants participated directly in the wrongful acts or practices, or had authority to control the corporations." *FTC v. Neovi, Inc.*, 598 F. Supp. 2d 1104, 1117 (S.D. Cal. 2008) (citing *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997); *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176,

1202 (C.D. Cal. 2000)). "'Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy.' An individual's status as a corporate officer and authority to sign documents on behalf of the corporate defendant can be sufficient to demonstrate the requisite control." *Id.* (citations omitted) (quoting *FTC v. Am. Standard Credit Sys., Inc.*, 874 F. Supp. 1080, 1089 (C.D. Cal. 1994)) (citing *Publ'g Clearing House*, 104 F.3d at 1170).

> To be held liable for restitution, the FTC must show … that the individual defendants had knowledge that the corporation or one of its agents engaged in the wrongful acts or practices. To satisfy the knowledge requirement, the FTC must establish that the individual defendant either: (1) had actual knowledge of the wrongful acts or practices; (2) was recklessly indifferent to whether or not the corporate acts or practices were fraudulent; or (3) had an awareness of a high probability that the corporation was engaged in fraudulent practices along with an intentional avoidance of the truth. The FTC does not need to show that an individual defendant intended to defraud consumers in order to hold that individual personally liable.

*Id.* (citations omitted). Evidence of control and participation is probative of knowledge. *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1082 (C.D. Cal. 2012), *rev'd in part on other grounds*, 815 F.3d 593 (9th Cir. 2016) (finding a "pervasive role and authority … which extended to almost every facet of the company's business and operations," "creates a strong inference" of "the requisite knowledge to be held individually liable"); *see also FTC v. Affordable Media*, 179 F.3d 1228, 1235 (9th Cir. 1999).

EPS and EPT admit that they are controlled by the same two principals: John Dorsey, President/CEO and co-owner, and Thomas McCann, Managing Member and co-owner. SF 1, 3. According to their employees, Dorsey and McCann run the business. SF 3. By approving merchant accounts that MNF used for credit card laundering, directing their employees to open problematic accounts, and dealing directly with the Wigdore Defendants, Dorsey and McCann directly participated in EPS's wrongful credit card laundering practices. SF 4, 5, & 10. There is no genuine dispute of material fact that Dorsey and McCann "participated directly in the wrongful acts or practices," of EPS, and/or "had authority to control the corporations." *Neovi*, 598 F. Supp. 2d 1117. Dorsey

and McCann may thus be subject to injunctive relief for EPS's violations of law, as well as for their own personal involvement in credit card laundering.

Dorsey and McCann also had the requisite knowledge to be held liable with EPS for equitable monetary relief. Given their complete authority over EPS, there is already "a strong inference" of their knowledge. *See Commerce Planet*, 878 F. Supp. 2d at 1082. Moreover, each knew of the relevant accounts when EPS boarded them. SF 5. Each personally approved some of the MNF-related accounts, and they should have seen that the applications were nearly identical while purporting to be for different merchants, and contained indicia of telemarketing and other red flags. SF 4, 5, 11, & 12. Each expressed complaints about the MNF-related accounts to Wigdore. SF 5. Dorsey and McCann led a corporate culture at EPS in which Wigdore's accounts were approved, no matter what. SF 10. There is no genuine dispute of material fact that Dorsey and McCann had at least "an awareness of a high probability that the corporation was engaged in fraudulent practices along with an intentional avoidance of the truth." *Neovi*, 598 F. Supp. 2d at 1117.

## II. The FTC Is Entitled to Summary Judgment on All Remaining Counts

Each of the three counts of the FAC alleged against EPS centers around EPS's involvement in, and assistance and facilitation of, credit card laundering.

### A. The EPS Defendants' Violative Conduct

EPS's conduct enabled the MNF scam to acquire consumers' money. The MNF scammers needed the merchant accounts that EPS set up through Merrick Bank in order to charge the consumer victims' credit cards. EPS kept the wheels turning.

Wigdore's office submitted applications for the 40 fictitious MNF merchants to EPS. SF 7. Like Elite Marketing Strategies, the fictitious merchant MNF used to rip off Birdie Williams, the applications each showed characteristics of unreliable merchants conducting telemarketing (e.g. vague descriptions of the merchants' business, extremely low credit scores with high rates of outstanding debt—or no credit history at all, making sales "over the phone" or via 100% "call center" or "telephone order"). SF 11. Viewed in groups, however, as they came into EPS, patterns emerge. *Id.* The applications are

virtually identical—a strong indication that the merchants were related. *Id.* The same suspect characteristics show up repeatedly. The handwriting—even to the unpracticed eye—looks the same; numerous applications showed the merchants' email address as kmamerchantsvcs@live.com; they all showed the same vague business descriptions "marketing and advertising" or "document prep." *Id.*; *see also* Killingsworth Rep. App. & Atts. Parts 1 & 2—Subject Merch. Apps. Submitted to EPS and Submitted to Merrick.

Rather than heed these warnings, EPS supplemented and altered the applications, adding and changing information to make the applications less suspicious-looking. SF 11 & 12. When some applications reflected the problematic policy of "all sales final," someone at EPS whited that out and wrote "N/A" on the application. *Id.* Applications that indicated cards were accepted via 100% "call center" or "telephone order" were changed to 100% "manually keyed," erasing an indicator of telemarketing, which would have increased Merrick's scrutiny of the merchant. *Id.* EPS employees also changed or added other information, such as monthly sales volume and average transaction amount or "ticket," to fit within Merrick's auto-approval program thresholds. SF 12 & 13. EPS then approved the applications and sent them on to Merrick Bank. SF 7, 10, 11, 12, & 13. Reviewers McCann, Dorsey and other EPS leaders gave their approval while overlooking glaring red flags remaining after EPS's alterations, such as two-word descriptions of the merchant's business, poor or non-existent credit histories, and other indicia of telemarketing, including merchants doing business "over the phone." SF 4, 5, 7, 10, 11, 12, & 13. EPS used Merrick's auto-approval policy to board merchants that the Bank would have otherwise rejected; it also permitted auto-approved merchants to continue processing even after Merrick directed that they be shut down. SF 11, 12, 13 & 14.

EPS resisted Merrick's requests to monitor the MNF-related accounts and blatantly ignored Merrick's inquiries about multiple suspicious accounts. SF 14 & 15. EPS knew that Merrick saw a pattern of bad accounts coming from Wigdore. SF 14. Despite that, EPS communicated with Wigdore's office about "fly[ing] under the radar" to evade Merrick's scrutiny. SF 16. In one egregious example, EPS's risk manager

instructed Wigdore associate Michael Abdelmesseh, also known as Mike Stewart, to open more merchant accounts and to "spread out" the MNF transactions across multiple merchant accounts in order to lower the volume of transactions processed through any single account. SF 16. EPS also provided the Wigdore Defendants with substantial assistance and training to combat chargebacks. SF 8.

**B. Defendants Engaged in Unfair Credit Card Laundering (Count II)**

Count II alleges that the EPS Defendants engaged in unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Specifically, Defendants (1) submitted merchant account applications for the MNF fictitious merchants to Merrick that misrepresented the true identity of the merchant, (2) approved and opened accounts for the MNF fictitious merchants, and (3) allowed those accounts to continue processing. To prevail on Count II, the FTC must prove that (a) the EPS Defendants' acts or practices caused or were likely to cause substantial injury to consumers; (b) consumers could not reasonably avoid that injury, and; (c) the EPS Defendants' acts or practices are not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. §45(n). Because undisputed evidence meets those statutory requirements, the Court should enter summary judgment for the FTC. *See FTC v. Neovi*, 604 F.3d 1150, 1153 (9th Cir. 2010).

**Causing Consumer Injury.** EPS acknowledges that the MNF scam harmed consumers; in fact, its damage was enormous. As the Court has already noted, EPS does not dispute that MNF was "a telemarketing scheme that sold worthless business opportunities to consumers" (Doc. 301 at 1) (citing EPS's and the FTC's undisputed facts); *see also* SF 6. Another court in this District calculated the harm MNF caused to be over $7 million. *See FTC v. Money Now Funding LLC*, No. 2:13-cv-1583-PHX-ROS, 2015 WL 11120847, at *5 (D. Ariz. July 1, 2015). The EPS Defendants have adduced no contrary evidence. The real question is whether undisputed evidence shows that the Defendants' conduct *caused or was likely to cause* that injury—and the answer is that it did. *See supra* Part II.A; *FTC v. HES Merch. Servs. Co.*, No. 6:12-cv-1618, 2016 WL 10880223, at *3 (M.D. Fla. Oct. 26, 2016) ("but for these accounts, [the scam] would not

have been able to process credit card payment charges made by consumers"); *see also id.*, at *5 ("The act of [the ISO] providing [the scam] with two merchant accounts was essential to the success of the scheme, and absent these merchant accounts, the [scam] would have been unable to process credit card payments; thus, [the ISO] substantially assisted the [scam]."), *aff'd sub nom FTC v. WV Universal Mgmt., LLC*, 877 F.3d 1234, 1240–42 (11th Cir. 2017). After subtracting refunds and chargebacks, the consumer loss attributable to EPS's conduct is $4,677,935. SF 18.

**Reasonable Avoidance.** This Court has already rejected EPS's claim (in its motion for summary judgment) that consumers who bought into the MNF scam could reasonably have avoided the harm that befell them as a result (Doc. 301, at 11-12). *See also* SF 8. The FTC now seeks summary judgment on that same point. The Court recited the relevant undisputed facts when it denied EPS's motion (Doc. 301, at 11-12). It went on to "find[] that any consumer injury was not reasonably avoidable via the charge back system and denie[d] EPS's motion on this ground." *Id.* at 12. Beyond the credit card chargeback system, there was no other way for MNF's victims to avoid the harm caused by MNF's deception—harm made possible by EPS's active and direct involvement in MNF's credit card laundering. Consumers lacked a "free and informed choice that would have enabled them to avoid the unfair practice." *Neovi*, 598 F. Supp. 2d at 1115. Consumers could not have chosen for their credit card payment to be processed any other way. *See* Killingsworth Rep. App. Awarding summary judgment to the FTC is the next logical step from the Court's denial of EPS's request; there are no additional facts that could be adduced at trial that would alter the Court's conclusion.

**No Countervailing Benefits.** The MNF scam, and the credit card laundering that allowed it to function, involved no benefit to consumers or competition, let alone a benefit sufficient to outweigh the significant economic harm it caused. In fact, EPS, Dorsey, and McCann have admitted that there is no legitimate business purpose for credit card laundering and concealing a merchant's true identity. SF 7.

**C. Defendants' Credit Card Laundering Violated the TSR (Count III)**

Count III alleges that the EPS Defendants engaged in illegal credit card laundering, as defined in the TSR. 16 C.F.R. § 310.3(c)(2). Specifically, by editing and approving the steady stream of facially suspicious MNF fictitious merchant account applications, and opening the accounts, the EPS Defendants *caused* the MNF fictitious merchants to "present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the [fictitious] merchant"—because the transaction was actually between the cardholding consumer and MNF itself. 16 C.F.R. § 310.3(c)(2); *see supra* Part II.A; *see also* SF 7, 11, 12, 13, & 16.[3]

**D. Defendants Assisted and Facilitated Credit Card Laundering (Count VI)**

Count VI alleges that the EPS Defendants provided substantial assistance or support to the MNF scammers. In order to establish that defendants violated the assisting and facilitating provision of the TSR, the FTC must show that the EPS Defendants: (1) provided substantial assistance or support; (2) to a seller or telemarketer; (3) while knowing or consciously avoiding knowing that the seller or telemarketer was engaged in an act or practice that violated the TSR. 16 C.F.R. § 310.3(c)(1)-(2). Everything EPS did to obtain merchant accounts for the MNF fictitious merchants, and to keep those accounts open, provided critical assistance or support to the merchants and the scam. *See supra* Part II.A; *see also* SF 7, 8, 10, 11, 12, 13, 14, 15, & 16. The evidence is undisputed. And EPS has acknowledged that MNF was engaged in telemarketing. SF 6.

The remaining question is whether EPS *knew or consciously avoided knowing* that the MNF fictitious merchants were engaged in credit card laundering. The applications themselves are the best evidence of knowledge and conscious avoidance; the changes EPS made show its knowledge that the applications were suspect. *See* SF 11 & 12. EPS's

[3] The MNF fictitious merchants were "merchants" who entered into "merchant agreements" with Merrick Bank via EPS, as those terms are defined by the TSR, 16 C.F.R. § 310.2(u)–(v). *See also* SF 7. MNF was a "seller" and "telemarketer" engaged in "telemarketing," as those terms are defined in the TSR, 16 C.F.R. § 310.2(dd), (ff), and (gg). *See also* SF 6.

communications with Merrick, as well as EPS's own follow-up, led to more suspicions. SF 14 & 16. For example, a note on a Daily Risk Report related to "AJ Marketing Group" says "Phone rings to Miller Marketing"—both MNF fictitious merchants. SF 16. The analyst testified that he found that "alarming." *Id.* In another example, when a consumer requested a chargeback against KMA Merchant Marketing, the merchant's response was submitted by Rose Marketing, not KMA. SF 16.[4] The undisputed evidence, *see supra* Part II.A, shows that EPS knew, or consciously avoided knowing, that the MNF fictitious merchants were concealing the true identity of the underlying merchant—MNF.

## III. The Relief Requested is Warranted and Necessary

While many of the issues discussed to this point are being briefed for the first time, the issue of remedies lies on a well-trodden trail for this Court. In response to a motion for judgment on the pleadings by Dorsey and McCann, the Court articulated the standards for granting injunctive relief in this case. In response to several motions by EPS, the Court reiterated the standards for equitable monetary relief. Under the tests that this Court has already discussed at length, there are no genuine disputes of material fact, and the FTC is entitled to the requested relief as a matter of law.

### A. The Court Should Issue the Requested Permanent Injunction

The second proviso of § 13(b) of the FTC Act authorizes courts to issue permanent injunctions against defendants who have violated the FTC Act. 15 U.S.C. § 53(b); *see FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994). This Court has held that:

> A court's power to grant injunctive relief survives the discontinuance of illegal conduct. Indeed, an inference arises from illegal past conduct that future violations may occur. … The voluntary cessation of violative conduct does not vitiate the need for injunctive relief if there is a possibility that the defendant is free to return to his old ways. Indeed, courts should be wary of a defendant's termination of illegal conduct when a defendant voluntarily ceases unlawful conduct in anticipation of formal intervention. Thus, in the Ninth Circuit, if a

[4] EPS employee Bellet wrote to Risk Manager Peterson: "[T]his was a case for KMA Merchant Services … all supporting Documentation sent in to rebuttal dispute has 'Rose Marketing LLC' plastered all over the paper work." SF 16 (citing EPS Dep. Ex. 122). Peterson then emailed kmamerchantsvcs@live.com, saying "Stewart: We cannot pre-arb with this documentation. We are going to have to let the cardholder win on this one as the argument against factoring is too great." *Id.* (citing EPS Dep. Ex. 123).

> violation of the FTC Act has ceased, an injunction will issue … if the FTC has reason to believe that the past conduct is likely to recur. To determine whether past conduct is likely to recur, courts consider the totality of the circumstances surrounding the defendant's conduct including the degree of scienter involved; the isolated or recurrent nature of the infraction; the defendant's recognition of the wrongful nature of his conduct; the likelihood, because of defendant's professional occupation, that future violations might occur; and the sincerity of his assurances against future violations.

*FTC v. Elec. Payment Sols. of Am. Inc.*, No. 17-cv-2535-PHX-SMM, 2019 WL 4287298, at *9–10 (D. Ariz. Aug. 28, 2019) (citations, quotation marks, and alterations omitted). The FTC "is not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past." *Grant Connect*, 763 F.3d at 1105 (quoting *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952)). Rather, "those 'caught violating' the FTC Act 'must expect some fencing in.'" *Id.* (quoting *FTC v. Nat'l Lead Co.*, 352 U.S. 419, 431 (1957)). "[I]njunctive relief under the FTC Act may be framed 'broadly enough to prevent respondents from engaging in similarly illegal practices in [the] future….' The injunction will be upheld so long as it bears a 'reasonable relation to the unlawful practices found to exist.'" *Id.* (quoting *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 394-95 (1965)).

EPS is still in the same business it engaged in from 2012-13. SF 2. Dorsey and McCann are still at the helm, and EPS continues to approve and board merchants. SF 1 & 2. EPS's knowledge is evident. *See supra* Part II.D. Its infractions continued for years. And EPS and its principals have completely failed to recognize the wrongful nature of their conduct. There is every reason to believe that EPS, Dorsey, and McCann are, at any moment, poised to violate the law again.

It is no help to EPS, Dorsey, and McCann that the FAC only discusses specific conduct through 2013. The EPS Defendants became aware of the FTC's litigation against the Money Now Funding scam on August 7, 2013, when the FTC served EPS with this Court's TRO. SF 19. Courts rightfully view defendants' cessation of violations as a direct result of government intervention with skepticism. *Elec. Payment Sols.*, 2019 WL 4287298, at *9–10 (Doc. 212); *see also, e.g.*, *FTC v. Sage Seminars, Inc.*, No. 95-cv-2854, 1995 WL 798938, at *6 (N.D. Cal. Nov. 2, 1995) (finding that "defendants'

claimed cessation of conduct [which] occurred only after defendants learned that the FTC had commenced an investigation into Sage's practices" could "hardly be considered 'voluntary'" and noting that "the Supreme Court has counseled that courts should be wary of a defendant's termination of illegal conduct when, as here, such action is taken in anticipation of formal intervention" (citing *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 n.5 (1953))); *In re Lovable Co.*, 67 F.T.C. 1326, 1332–33 (1965); *see also FTC v. Triangle Media Corp.*, No. 18-cv-1388, 2018 WL 6305675, at *1 (S.D. Cal. Dec. 3, 2018). And EPS's illegal conduct did not end when it learned about the FTC's case against MNF. EPS continued to work with merchants suspected of deceptive and unfair acts or practices after its relationship with Wigdore and the MNF merchants ended. SF 17. Other than some additional review by its COO, EPS's process for underwriting and boarding merchants has not changed since 2013. *Id.*

EPS's subterfuge and evasion of its own bank's risk detection processes illustrate its capacity for flouting the law for its own gain. SF 12, 13, & 14. Permanent injunctive relief is necessary to ensure that EPS abides by the law and does not approve and open accounts for fraudulent merchants. *See Nat'l Lead*, 352 U.S. at 431; *Trans World Accounts, Inc. v. FTC*, 594 F.2d 212, 215 (9th Cir. 1979).

**B. The Court Should Order Equitable Monetary Relief**

Where, as here, consumers suffer economic injury resulting from defendants' violations of the FTC Act, equity requires monetary relief in the full amount lost by consumers. *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009) (affirming summary judgment holding defendants liable for the full amount of loss incurred by consumers); *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 1011 (N.D. Cal. 2010), *aff'd*, 475 F. App'x 106 (9th Cir. 2012) (courts "often award[] restitution in the full amount … lost by consumers").

The harm caused by the EPS defendants' actions is the total amount of MNF credit card sales that were laundered through the MNF-related merchant accounts at EPS net of refunds ($6,282,519.40), less the amount that was charged back ($1,604,583.65), leaving an uncompensated consumer harm of $4,677,935.75. SF 18; *see FTC v. Wells*, 385 F.

App'x 712, 713 (9th Cir. 2010) (per curiam) (upholding shared liability between payment processors and scammers, the Court noted: "The FTC may seek full restitution from any individual who caused consumer harm through unfair practices"). The FTC in this case seeks to return to consumer victims these "monies [to which they are] legally entitled" (Doc. 301, at 6). Collective liability is discussed below—but assuming that these defendants are collectively liable with MNF itself for this harm, restitution of every dollar of uncompensated consumer loss is the appropriate remedy. *See Wells*, 385 F. App'x at 713; *Stefanchik*, 559 F.3d at 931–32 ("Equity may require a defendant to restore his victims to the status quo where the loss suffered is greater than the defendant's unjust enrichment."); *HES Merch. Servs.*, 2016 WL 10880223, at *6–8; *FTC v. Windward Mktg.*, No. 96-cv-615, 1997 WL 33642380, at *15 (N.D. Ga. Sept. 30, 1997).[5]

The Court has concluded that the equitable principles articulated in *Liu v. SEC*, 140 S. Ct. 1936, 1945 (2020), apply here (Doc. 301 at 9).[6] Under those principles, EPS is still collectively liable with the other defendants and with MNF for the uncompensated consumer harm. As *Liu* recognized, there is "some flexibility to impose collective liability" for equitable monetary relief in the common law. *Liu*, 140 S. Ct. at 1949. For example, "partners engaged in concerted wrongdoing" may be held collectively liable. *Id.* This includes one who "**knowingly connected himself with** and **aided in** … fraud." *Id.* at 1945 (quoting *Ambler v. Whipple*, 87 U.S. 546, 559 (1874)) (emphasis added). Thus the facts giving rise to EPS's liability for assisting and facilitating credit card laundering under the TSR also give rise to EPS's liability for equitable monetary relief—that is,

[5] A burden-shifting framework applies to calculating restitution in FTC cases. "The Commission must show that its calculations reasonably approximated the amount of customers' net losses, and then the burden shifts to the defendants to show that those figures were inaccurate." *FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997); *see also Commerce Planet*, 815 F.3d at 603–04. Defendants may attempt "to show that those figures were inaccurate," *Febre*, 128 F.3d at 535, but they were based on defendants' and their vendors' own records—and the risk of inaccuracy in those records falls on them. *See Commerce Planet*, 815 F.3d at 604; *Febre*, 128 F.3d at 535. In any case, there is no contradictory evidence in the record. The undisputed facts show that the consumer loss amount is $4,677,935.75 and summary judgment should therefore be granted to the FTC.

[6] The FTC does not concede that *Liu* applies to this case, where the FTC (unlike the SEC in *Liu*) seeks monetary relief to make restitution to consumers. The FTC recognizes, however, that the Court's findings apply to this litigation going forward.

while **"know[ing] or consciously avoid[ing] knowing"** that the fictitious MNF merchants were engaged in credit card laundering, EPS **"provide[d] substantial assistance or support"** to them, 16 C.F.R. § 310.3(b); *see supra* Part II.D.

In issuing the assisting and facilitating provision of the TSR, the FTC noted that "knowledge of, and substantial assistance to, another's wrongdoing are a sufficient basis for liability in tort." 60 Fed. Reg. 43,842, 43,851 (Aug. 23, 1995). The FTC cited § 876 of the Restatement of Torts, titled *Persons Acting in Concert*: "For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he … knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so as to conduct himself." Restatement (Second) of Torts §876(b) (1977). In holding that violations of the assisting and facilitating provision of the TSR give rise to collective liability, the Eleventh Circuit observed that:

> There can be little mistaking the resemblance between the Restatement § 876(b) and the TSR. The provisions share the same three basic elements: a primary violation; substantial assistance or encouragement (in the case of the Restatement) or support (the TSR); and knowledge (the Restatement and the TSR) or conscious disregard (the TSR). The TSR's resemblance to a well-established torts concept is noteworthy because aiding and abetting in tort can result in joint and several liability. In tort, the aider-abettor is liable to the injured party "for the entire harm." Restatement (Second) of Torts § 875 & cmt. a (1979) (referring to § 876 as a "specific application[ ] of the rule here stated") …. We extend the analogy: **[a payment processor] may be held jointly and severally liable with the [scammers] for providing them substantial assistance [in the form of merchant accounts] in violation of the TSR.**

*WV Universal Mgmt.*, 877 F.3d at 1240-41 (footnote omitted) (emphasis added); *see also id.* at 1241 n.2 ("The Restatement's pedigree on this topic is well established." (citing cases)). The Eleventh Circuit also found corroboration for its holding in historic aiding and abetting liability in securities law, which the FTC also recognized when issuing the assisting and facilitating rule. *Id.* at 1241-42 (citing 60 Fed. Reg 43,851 & n.97). For the same reasons, EPS's liability on Count VI must give rise to its shared liability with other wrongdoers for the uncompensated losses of MNF victims, even under *Liu*.

*Liu*'s key holding in this area is that a party cannot be held liable for "profits … which have accrued to another, *and in which they have no participation*." 140 S. Ct. at 1949 (quoting *Belknap v. Schild*, 161 U.S. 10, 26 (1896)) (emphasis added). The undisputed facts here, however, establish that EPS "knowingly connected [itself] with and aided" MNF's fraudulent credit card laundering, *Ambler*, 87 U.S. at 559, and thus cannot be said to have "no participation" in MNF's unjust enrichment, *Belknap*, 161 U.S. at 26, s*ee supra* Parts II.A & D. Instead, EPS and Wigdore worked hand in hand to keep the MNF-related merchant accounts open and funds flowing from deceived consumers to MNF. *Id.* Just a few significant examples: EPS drafted a form that Wigdore passed along to MNF to challenge chargebacks. SF 8. Wigdore promised to indemnify EPS for losses incurred from the MNF-related merchant accounts, SF 9, which gave EPS incentive to approve the applications for those merchants, SF 10. And Wigdore was so eager to be associated with EPS that he created companies with the initials "EPS," with the real EPS's knowledge and tacit consent. SF 21.

*Liu* recognized that there is a "wide spectrum of relationships between participants and beneficiaries of unlawful schemes—from equally culpable codefendants to more remote, unrelated tipper-tippee arrangements," and concluded that "the Court need not wade into all the circumstances where an equitable profits remedy might be punitive when applied to multiple individuals" at that juncture. 140 S. Ct. at 1949. In light of the undisputed facts, and the authorities holding that facts giving rise to assisting and facilitating liability under the TSR also give rise to collective liability, EPS is not so far down the "wide spectrum of relationships" that it would be punitive to hold EPS liable for equitable monetary relief here. *Id.* An order of restitution in the amount of $4,677,935.75 is appropriate and necessary to redress the harm to consumers caused by EPS's participation in the collective violations of law of Defendants and MNF.[7]

[7] Counts II (FTC Act unfairness) and III (TSR credit card laundering) are also predicated on EPS's direct and active participation in MNF's credit card laundering. Though they do not necessarily require showing knowledge as in Count VI (assisting and

## IV. Defendants' Affirmative Defenses Do Not Bar Summary Judgment

### A. Waiver, Laches, Estoppel, and Unclean Hands are Not Available

Defendants plead—together but in the alternative—the affirmative defenses "waiver, laches, or estoppel," alleging that the FTC should have sued EPS as part of the *Money Now Funding* litigation. EPS Answer (Doc. 93) at 49-50; Dorsey Answer (Doc. 89) ¶¶ 202-03; McCann Answer (Doc. 91) ¶¶ 202-03). They also separately allege that the FTC has unclean hands for the same reason. EPS Answer at 50; Dorsey Answer ¶ 203; McCann Answer ¶ 203). The Court should grant summary judgment to the FTC, notwithstanding these defenses, as a matter of law.

In general, the government is not subject to equitable defenses. *See Heckler v. Community Health Servs. of Crawford County*, 467 U.S. 51, 60-61 (1984); *see also United States v. Summerlin*, 310 U.S. 414, 416 (1940) (laches); *United States v. Menatos*, 925 F.2d 333, 335 (9th Cir. 1991) (laches). Though the equitable defenses of unclean hands and estoppel may be available where the government's conduct warrants it, they are not appropriate here. Unclean hands is only available if a defendant alleges "egregious" or "outrageous" agency conduct that results in prejudice that "rises to a constitutional level." *See, e.g.*, *FTC v. Commerce Planet, Inc.*, No. 09-cv-1324, 2010 WL 11673795, at *3 (C.D. Cal. July 6, 2010); *SEC v. Sands*, 902 F. Supp. 1149, 1166 (C.D. Cal. 1995). EPS did not allege, nor is there a shred of evidence to prove, that the FTC's conduct was in any way inappropriate, much less constitutionally egregious or outrageous. SF 20. The bar for equitable estoppel is arguably lower, but EPS has not remotely reached it.[8]

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facilitating), as a practical matter under these facts, however, knowledge supports a judgment for equitable monetary relief on those counts as well.

[8] Equitable estoppel is only available against the government if a litigant can show that: (1) the government engaged in affirmative misconduct beyond mere negligence; and (2) "the government's wrongful act will cause a serious injustice, and the public's interest will not suffer undue damage by imposition of the liability." *Watkins v. U.S. Army*, 875 F.2d 699, 707 (9th Cir. 1989). Affirmative misconduct "require[s] an affirmative misrepresentation or affirmative concealment of a material fact by the government." *Id.* (citing *United States v. Ruby*, 588 F.2d 697, 703-04 (9th Cir. 1978)); *see also Purcell v. United States*, 1 F.3d 932, 940 (9th Cir. 1993) ("Affirmative misconduct involves ongoing active misrepresentations or a pervasive pattern of false promises.").

Defendants claim that the FTC engaged in affirmative misconduct by not naming or including them in *Money Now Funding*, but instead suing them later in a separate action. That is not misconduct, let alone affirmative misconduct justifying an estoppel defense, or egregious misconduct justifying an unclean hands defense. Defendants state the FTC's delay impaired their ability to defend themselves, but there is no evidence to that effect. The *only* evidence, provided by the FTC's representative in a 30(b)(6) deposition, is that the FTC had sound reasons for suing these defendants when it did, rather than as part of the MNF case. SF 20. The FTC is not required to name in its enforcement actions all entities involved with an allegedly unfair or deceptive practice. *See Commerce Planet*, 2010 WL 11673795, at *3. And delay is not affirmative misconduct for purposes of estoppel. *See, e.g.*, *INS v. Miranda*, 459 U.S. 14, 18 (1982).

**B. Defendants' Additional Defenses are Invalid**

*Defendants McCann and Dorsey had no knowledge of the purported fraud, "factoring" and/or laundering and did not have any control over those alleged activities.* This mere denial of the FTC's factual allegations is not an affirmative defense.

*Failure to state a claim.* Not an affirmative defense. *FTC v. Forensic Case Mgmt. Servs.*, No. 11-cv-7484, 2012 WL 13134767, at *2–3 (C.D. Cal. Nov. 15, 2012). The Defendants can challenge the FAC by other means. *See* Fed. R. Civ. P. 12(h)(2).

*Setoff for chargebacks previously paid by EPS.* Moot. The FTC does not seek to recover for chargebacks paid by EPS; the FTC has already deducted that amount from its calculation of consumer loss. SF 18.

*Setoff for amounts collected in the previous MNF litigation.* Irrelevant; the FTC's claim for restitution is founded on the concept of collective liability, as discussed *supra* Part III.B. Further, the hardship caused by MNF exceeds what the FTC seeks in this case and what the FTC was able to recover in *Money Now Funding*.

*Failure to mitigate.* Not a defense when a plaintiff seeks equitable relief. *See FTC v. Medicor LLC*, No. 01-cv-1896, 2001 WL 765628, at *2 (C.D. Cal. June 26, 2001). Because the FTC seeks only equitable relief in this case, the failure to mitigate

affirmative defense fails as a matter of law.[9] *See id.*; *United States ex rel. Poehling v. UnitedHealth Grp.*, No. 16-cv-8697, 2019 WL 2353125, at *9–10 (C.D. Cal. Mar. 28, 2019).

*Damages or consumer redress, if any, were the fault of the Non-EPS Defendants.* Invalid as a matter of law. The FTC's claim for restitution is founded on the concept of collective liability, as discussed *supra* Part III.B.

*Damages or consumer redress, if any, were the fault of non-parties.*[10] Irrelevant and invalid as a matter of law. The FTC is not required to sue all entities involved with an allegedly unfair or deceptive practice. *Commerce Planet*, 2010 WL 11673795, at *3.

*Relief sought by the FTC is not authorized.* Moot. This is a legal argument that the Court has already resolved in the FTC's favor (Docs. 212, 301). The Court's denials of Dorsey and McCann's motion for judgment on the pleadings (Doc. 212) and EPS's motion for summary judgment (Doc. 301) render this claim moot.

*Statute of limitations.* Defendants allege that a "three-year statute of limitations … in the FTC Act" bars the FTC's claims. EPS Answer, at 51; Dorsey Answer ¶ 205; McCann Answer ¶ 205). There is no such limitation in §13(b).[11] Rather, the FTC may bring suit "whenever" it has reason to believe a violation has occurred. 15 U.S.C. § 53(b); *see also FTC v. Ivy Capital, Inc.*, No. 2:11-cv-283, 2011 WL 2470584, at *2 (D. Nev. June 20, 2011) (striking statute of limitations affirmative defense).

In sum, Defendants' affirmative defenses, which are either legally invalid, factually unsupported, or not even affirmative defenses, do not bar the Court's entry of summary judgment on behalf of the FTC in this action.

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[9] Regardless, the FTC effectively mitigated consumer losses; it employed the most direct, prompt, and effective means to stop the MNF scam by filing a complaint with this Court on August 5, 2013, obtaining a temporary restraining order enjoining the MNF defendants' illegal conduct that very same day, and ultimately obtaining permanent injunctions that shuttered the scam for good. The FTC's actions prevented additional consumers from being victimized by the scheme. Notably, the FTC served EPS with the TRO against MNF two days after it was entered, when the FTC executed the TRO at certain of the *Money Now Funding* defendants' business premises. SF 19.

[10] EPS asserted this defense when it answered the original complaint, but later withdrew it (Doc. 41 at 12). EPS reasserted the defense when it answered the FAC. (Doc. 93).

[11] There is a three-year statute of limitations in Section 19 of the FTC Act; it does not apply here, where the FTC has not sought relief under that Section.

**Conclusion**

The undisputed material evidence in this case is overwhelming. The FTC therefore respectfully requests that the court grant the FTC's motion and enter summary judgment and the attached proposed final order for permanent injunction and equitable monetary relief against the EPS Defendants on all counts.

Respectfully submitted,

Dated: September 25, 2020

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## CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2020, I electronically filed the foregoing Motion for Summary Judgment Against Defendants Electronic Payment Solutions of America, Inc., Electronic Payment Services, Inc., Jay Wigdore, Electronic Payment Systems, LLC, Electronic Payment Transfer, LLC, John Dorsey, and Thomas McCann with the Clerk of the Court using CM/ECF, which will cause a copy of the same to be served on the following parties entitled to service:

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