



**IT IS THEREFORE STIPULATED, AGREED, AND ORDERED AS  
FOLLOWS:**

**FINDINGS OF FACT**

1. This Court has jurisdiction over the subject matter of this case and the parties pursuant to 15 U.S.C. §§ 45(a), 53(b), 57(b), 6101(b), and 6102(c), as well as 28 U.S.C. §§ 1331, 1337(a), and 1345.
2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
3. The activities of Defendants are in or affecting “commerce,” as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57(b).
5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.
6. The undersigned, individually and by and through their counsel, have agreed that the entry of this Order resolves all claims arising from the facts that form the basis of the Complaint in this action, up to the date of entry of this Order.

7. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission, its employees, representatives, or agents.
8. Defendants and the Commission agree that this Order does not entitle Defendants or the Commission to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, 110 Stat. 847, 863-64 (1996), and Defendants further waive any right to attorneys' fees that may arise under said provision of law. The parties shall each bear their own costs and attorneys' fees incurred in this action.
9. The parties have conferred through counsel and have agreed to settle this action without the Defendants admitting fault or liability or any wrongdoing whatsoever in connection with the violations alleged in the Complaint. By entry of this Order, the Defendants admit the jurisdictional facts alleged in the Complaint, but only the jurisdictional facts alleged in the Complaint.
10. There being no just reason for delay, the Clerk is directed to enter this final Order immediately.

## DEFINITIONS

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

1. “Automatic Clearing House network” or “ACH network” shall mean the electronic funds transfer system governed by the NACHA Rules that provides for the interbank clearing of credit and debit entries to accounts at financial institutions.
2. “ACH debit” shall mean any completed or attempted debit to a consumer’s account at a financial institution that is processed electronically through the ACH network.
3. “ACH processing” shall mean the transfer of funds or attempted transfer of funds through the ACH network either as an ACH debit or credit.
4. “Payment Processing” shall mean the performance of any function of collecting, charging, or transmitting a consumer’s payment for goods or services by debiting or otherwise accessing a consumer’s credit card account or bank account, through the use of any payment mechanism, including but not limited to bank checks (demand drafts), credit card transactions, and ACH processing.
5. “Client” shall mean any person, corporation, originator or other entity that has retained or contracted with Defendants for Defendants to provide services as a third-party processor or third-party originator of ACH transactions.

6. "NACHA" shall mean the National Automated Clearing House Association.
7. "NACHA Rules" shall mean the NACHA Operating Rules, as amended from time to time.
8. "Corporate Defendants" shall mean First American Payment Processing, Inc., Check Processing Center, LLC, and CET Corp.
9. "Individual Defendants" shall mean Carl E. Towner and Matthew Robinson.
10. "Defendants" shall mean the Corporate Defendants and the Individual Defendants.
11. "Relief Defendants" shall mean Jennifer Suzanne Towner (wife of Carl E. Towner) and Jennifer Robinson (wife of Matthew Robinson).
12. "Document" shall be synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.
13. "Telemarketing" shall mean any business activity (whether or not covered by the TSR, 16 C.F.R. Part 310, including but not limited to initiating or

receiving telephone calls) that involves attempts to induce consumers to purchase any investment, item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing.

## **CONDUCT PROHIBITIONS**

### **I.**

**IT IS HEREBY ORDERED** that the Defendants are permanently restrained and enjoined from Payment Processing, where the purported authorization for the ACH debit or other payment was given during an Outbound Telephone Call, as that term is defined in the TSR, 16 C.F.R. § 310.2(u), as currently promulgated or as it may hereafter be amended.

### **II.**

**IT IS FURTHER ORDERED** that Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from violating any provision of the TSR, 16 C.F.R. Part 310, as currently promulgated or as it may hereafter be amended, including any act which assists or facilitates a violation of the TSR as set forth in 16 C.F.R.

§ 310.3(b), including but not limited to providing substantial assistance or support to any telemarketer or seller who Defendants know or consciously avoid knowing:

- A. Induces consumers to pay for goods or services through the use of false or misleading statements;
- B. Represents that after paying an advance fee consumers are guaranteed or have a high likelihood to receive a loan or other extension of credit, including, but not limited to, credit cards; or
- C. Causes billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer.

### III.

**IT IS FURTHER ORDERED** that Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from Payment Processing for any transaction where:

- A. Defendants fail to obtain a Client's written assurance or documents, including, but not limited to, the Client's policies and procedures, that demonstrate that the Client's business practices comply with any applicable NACHA Rules regarding consumer authorization of debits for transactions;  
or

- B. Defendants receive information indicating that the business practices of the Client or any other person who transmits the transaction to Defendants do not comply with the TSR, applicable NACHA Rules, or the FTC Act, as currently promulgated or as they may hereafter be amended. Such information shall include but not be limited to: unauthorized return rates that exceed the threshold set forth for return entry reporting requirements as currently specified in Section 2.11.3 of the NACHA rules or as the NACHA rules may hereafter be amended; a significant number of consumer complaints in any given month regarding unauthorized charges; or notice that federal, state, or local authorities have charged the Client with violations of the TSR, the NACHA rules, or the FTC Act.

#### **IV. SETTLEMENT FUNDS**

**IT IS FURTHER ORDERED** that:

- A. The Defendants and Relief Defendants shall pay to the Commission the amount of \$1,580,739.98 as more fully described in this Paragraph.
- B. Payment of the full settlement amount of \$1,580,739.98 shall consist of the release of the funds previously provided by Defendants to the Commission, which release is effective upon the Court's execution of this Order.
- C. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true solely for the purpose of a nondischargeability complaint in any bankruptcy case. The parties, however, agree that this

Paragraph shall be void and of no further effect ninety (90) days from the date the settlement funds are released to the Commission.

#### **V. COMMISSION'S USE OF SETTLEMENT FUNDS**

**IT IS FURTHER ORDERED** that all funds paid pursuant to Paragraph IV of this final Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' purported practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

#### **VI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

#### **VII. RECORD KEEPING**

**IT IS FURTHER ORDERED** that, for a period of seven (7) years from the date of entry of this Order, for any Telemarketing or Payment Processing business where an

Individual Defendant is the majority owner of the business or directly or indirectly manages or controls the Telemarketing or Payment Processing business, each Individual Defendant and his or her agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with the Individual Defendant who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such Telemarketing or Payment Processing business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraphs VI and X, and all reports submitted to the FTC pursuant to Paragraph VIII.

### **VIII. COMPLIANCE REPORTING BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of four (4) years from the date of entry of this Order,
1. Each Individual Defendant shall notify the FTC of the following:
    - a. Any changes in the Individual Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - b. Any changes in employment status (including self-employment) of the Individual Defendant, and any change in the ownership of the Individual Defendant in any Telemarketing or Payment Processing business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each Telemarketing or Payment Processing business that the Individual Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of any Telemarketing or

Payment Processing business; and a statement of the Individual Defendant's duties and responsibilities in connection with the Telemarketing or Payment Processing business or employment; and

c. Any changes in the Individual Defendant's name or use of any aliases or fictitious names.

2. Each Corporate Defendant shall notify the Commission of any change in corporate structure and each Individual Defendant shall notify the Commission regarding any change in a Telemarketing or Payment Processing business entity that the Individual Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which any Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the

Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, each Defendant shall provide a written report to the FTC, sworn to under penalty of perjury under the laws of the United States, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For each Individual Defendant:
  - a. The then-current residence address, mailing addresses, and telephone numbers of the Individual Defendant;
  - b. The then-current employment and business addresses and telephone numbers of the Individual Defendant, a description of the Telemarketing or Payment Processing business activities of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or business; and
  - c. Any other changes required to be reported under subparagraph A of this Paragraph.
2. For all Defendants:
  - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraphs VI and X;

b. Any other changes required to be reported under subparagraph A of this Paragraph.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. 238  
Washington, DC 20580

Re: FTC v. First American Payment Processing, et al., Civil Action No. 04-0074 D.AZ.

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission shall communicate with Defendants' counsel, Cynthia Ricketts and/or Brian McQuaid of Squire, Sanders & Dempsey L.L.P. However, the Commission may send courtesy copies of any written communication directly to Defendants.

#### **IX. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within fifteen (15) days of receipt of written notice from a representative of the Commission, each Defendant shall submit additional written reports, sworn to or affirmed under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's

possession or direct or indirect control to inspect the business operation, except that access to electronic records will be provided at a mutually convenient time that will not disturb Payment Processing activities; *provided* that such Defendant, after attempting to resolve any dispute arising under this subparagraph without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c).

- B. In addition, the FTC is authorized to monitor compliance with this Order by all other lawful means, including but not limited to:
1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
  2. Posing as consumers and suppliers to: Defendants, Defendants' employees, or any other Telemarketing or Payment Processing entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and
- C. Each Defendant shall permit representatives of the FTC to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

#### **X. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. Corporate Defendants: Each Corporate Defendant must deliver a copy of this Order to all of its principals, officers, directors, and managers. Each Corporate Defendant also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within ten (10) days of service of this Order upon the Corporate Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. Individual Defendants as Control Persons: For any Telemarketing or Payment Processing business that each Individual Defendant controls, directly or indirectly, or in which the Individual Defendant has a majority ownership interest, the Individual Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that

Telemarketing or Payment Processing business. Each Individual Defendant must also deliver copies of this Order to all employees, agents, and representatives of that Telemarketing or Payment Processing business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within ten (10) days of service of this Order upon the Individual Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

- C. Individual Defendants as employees or non-control persons: For any Telemarketing or Payment Processing business where each Individual Defendant is not a controlling person of the Telemarketing or Payment Processing business but otherwise engages in conduct related to the subject matter of this Order, the Individual Defendant must deliver a copy of this Order to all principals and managers of such business within ten (10) days of entry of this Order or, if the Individual Defendant has not engaged in such conduct, before engaging in such conduct.
- D. Each Corporate Defendant and each Individual Defendant must secure a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons receiving a copy of the Order pursuant to this Paragraph.

**XI. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**XII. ENTRY OF THIS ORDER**

**IT IS FURTHER ORDERED** that, as there is no just reason for delay of entry of this final Order, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this final Order immediately.

**XIII. COMPLETE SETTLEMENT**

The parties hereby consent to entry of the foregoing final Order which shall constitute a permanent injunction and final order in this matter. The parties further stipulate and agree that the entry of the foregoing final Order shall constitute a full, complete, and final settlement of this action.

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Susan R. Bolton  
United States District Judge

*[Signatures continue . . .]*

For the Commission:



Michael P. Mora

Marc Groman

Gary Ivens

Monica Vaca

FEDERAL TRADE COMMISSION

*Attorneys for Plaintiff*

For Defendants:

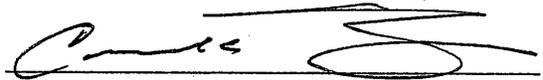


Cynthia Ricketts

Brian McQuaid

Squire, Sanders & Dempsey L.L.P.

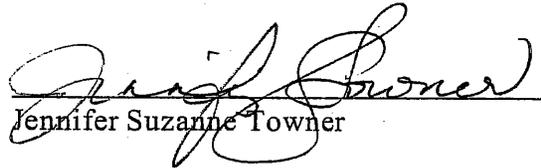
*Attorneys for Defendants*



Carl E. Towner

*Individually and on behalf of First  
American Payment Processing, Inc.,*

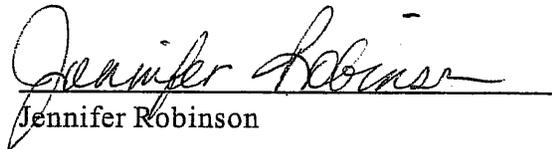
*Check Processing Center, LLC, and CET  
Corp.*



Jennifer Suzanne Towner



Matthew Robinson



Jennifer Robinson