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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

FEDERAL TRADE COMMISSION,

Civ. No. CV07-0533 BR

Plaintiff,

v.

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AS TO AARON
LEE RIAN**

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

Defendants.

This matter comes before the Court on stipulation of Plaintiff Federal Trade Commission ("Plaintiff" or "FTC" or "Commission") and Defendant Aaron Lee Rian ("Defendant" or

“Rian”). On April 11, 2007, this Court granted Plaintiff’s *ex parte* application and entered a Temporary Restraining Order (“TRO”) with an order to show cause why a preliminary injunction should not issue against Defendants Merchant Processing, Inc. (“MPI”), Direct Merchant Processing, Inc. (“DMP”), Vequity Financial Group, Inc. (“Vequity”), and Aaron Lee Rian. The parties entered into a Stipulated Preliminary Injunction (“Stip. PI”) on April 30, 2007. On September 28, 2007, this Court granted Plaintiff’s second *ex parte* application and entered a second TRO against the original defendants as well as two additional parties, Karely McCarthy, a.k.a. Karly Speelman, (“McCarthy”), and PPI Services Inc. (“PPI”). Subsequently, the Court extended the TRO against all parties, and on October 3, 2007, Plaintiff moved this Court for leave to amend its Complaint to add McCarthy and PPI as defendants and also filed a Motion for Preliminary Injunction as to all defendants, including McCarthy and PPI. On October 12, 2007, this Court entered a Stipulated Temporary Restraining Order as to all defendants, and Plaintiff filed its First Amended Complaint. On November 2, 2007, the Court entered a Second Stip. PI as to all defendants. The Commission and Defendant Aaron Lee Rian, acting by and through counsel, now stipulate to entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Final Order”).

NOW, THEREFORE, the Commission and Defendant, having requested the Court to enter this Final Order, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

- A. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendant.
- B. Venue is proper as to all parties in the District of Oregon under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

C. The activities of Defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

D. The First Amended Complaint (“Complaint”) states a claim upon which relief may be granted against Defendant under §§ 5(a)(1), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 53(b).

E. The Commission and Defendant stipulate and agree to this Final Order to settle and resolve all matters in dispute arising from the Complaint in the above-captioned matter to the date of entry of this Final Order.

F. Defendant enters into this Final Order freely and acknowledges that he has read and understands the provisions of this Final Order and has agreed to abide by them.

G. Defendant waives all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order.

H. Defendant waives all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

I. Defendant waives and releases any claim he may have against the Commission and its employees, representatives, or agents as of the date of entry of this Final Order.

J. No provision of this Final Order shall be construed as an admission that Defendant has engaged in violations of the FTC Act or the acts or omissions alleged in the Complaint.

K. This Final Order is remedial in nature and shall not be construed as payment of a fine, penalty, punitive assessment, or forfeiture.

L. Entry of this Final Order is in the public interest.

M. Each party shall bear its own costs and attorneys fees.

DEFINITIONS

For the purpose of this Final Order, the following definitions shall apply:

1. **“Acquiring bank”** means a bank that provides businesses with merchant accounts where the proceeds of the businesses’ credit and debit card sales are deposited.
2. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real or personal property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), and all cash, wherever located.
3. **“Assisting”** means providing substantial assistance or support to any person. For purposes of this Final Order, providing substantial assistance or support includes, but is not limited to: (a) recording or verifying sales solicitations; (b) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, obtaining or receiving identifying and financial information from consumers, and communicating with consumers on behalf of the seller or telemarketer; (c) developing, providing, or arranging for the development or provision of sales scripts or any other marketing material; (d) verifying, processing, fulfilling, or arranging for the fulfillment of orders; (e) developing, providing, or arranging for the provision of names of potential customers; (f) collecting or arranging for the collection of accounts receivable or other amounts owed; (g) performing or providing marketing services of any kind; (h) processing card transactions; or (i) consulting. Assisting does not include employment with a financial institution unless such employment includes any one or more of (a) through (i) above.
4. **“Card processing goods or services”** means goods or services relating to the

acceptance, authorization, settlement, or payment for credit or debit card-related sales.

5. **“Clearly and conspicuously”** means:

- a. if presented in writing, the information shall be in a type size and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page;
- b. if presented orally, the information shall be disclosed in a volume, cadence, and syntax sufficient for an ordinary consumer to hear and comprehend; and
- c. nothing contrary to any information disclosed shall be imparted at or near the time of the disclosure. Further, a subsequent disclosure made orally or in writing only limits or qualifies a prior disclosure and cannot cure a false claim.

6. **“Consumer”** means an actual or potential purchaser, customer, licensee, or lessee, regardless of whether that person is a corporation, limited liability corporation, partnership, association, other business entity, or natural person, and regardless of whether the purchase is made for business purposes or for personal or household purposes.

7. **“Defendant”** means Aaron Lee Rian, whether acting directly or through any successor, assign, agent, employee, entity, corporation, subsidiary, division, or other device, unless specified otherwise.

8. **“Defendants”** means Merchant Processing, Inc.; Vequity Financial Group, Inc.; Direct

Merchant Processing, Inc.; PPI Services Inc., d.b.a. Direct Processing, Inc., and Merchant Services, Inc.; Aaron Lee Rian; and Karely McCarthy, a.k.a. Karly Speelman, and each of them, by whatever names each might be known.

9. **“Merchant”** means a person, corporation, or any other entity that acts as a consumer by purchasing, leasing, or renting card processing goods or services.

10. **“Merchant Account”** means a bank account opened at an Acquiring Bank in the name of a Merchant for deposits of the proceeds of the Merchant’s credit or debit card-related sales transactions. “Merchant Account” also includes, but is not limited to, goods, leases, and services related to that account.

11. **“Merchant Account Portfolio”** means all Merchant Accounts from which the Receivership Defendants derive any income.

12. **“Person”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

13. **“Receiver”** shall mean Michael A. Grassmuck, in his capacity as Receiver over the Receivership Defendants appointed pursuant to the Second Stipulated Preliminary Injunction. The Receiver is not an employee, representative, or agent of the FTC.

14. **“Receivership Defendants”** means Merchant Processing, Inc.; Vequity Financial Group, Inc.; Direct Merchant Processing, Inc.; PPI Services Inc., d.b.a. Direct Processing, Inc., and Merchant Services, Inc., Oregon corporations, and their affiliates and subsidiaries, and any other corporations or businesses under the control of any of them, or under the control of Rian or McCarthy at any time prior to entry of this Final Order, including but not limited to Bad Boy Enterprises, Inc., d.b.a. Atlantic Hound; Bad Boy Racing, LLC; Bad Boy Investments, LLC; and Rian Racing, Inc.

CONDUCT PROHIBITIONS

I.

Ban on Certain Activities

IT IS THEREFORE ORDERED that the Defendant, whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device, is hereby permanently restrained and enjoined from engaging, participating, or assisting others in the advertising, promoting, marketing, offering for sale, selling, offering for lease, or being the lessor of card processing goods or services. *Provided, however*, that nothing in this Paragraph shall be construed to prohibit Defendant from working at a company or participating in a business enterprise solely because that company or that business enterprise accepts payment for goods or services by way of credit or debit cards.

II.

Prohibited Business Activities

IT IS FURTHER ORDERED that Defendant, his successors and assigns, and his officers, agents, directors, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or lease of any product or service, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, expressly or by implication:
 - 1. the savings a consumer will realize if the consumer purchases the product or service;
 - 2. that any existing leases or contracts will be bought out if a consumer purchases

the product or service;

3. any material fact relating to fees or rates charged for the product or service;

4. any other material fact regarding the product or service;

B. In connection with representing directly or by implication that consumers will be charged any particular rate or fee, failing to disclose clearly and conspicuously all material facts relating to rates and fees, including but not limited to the amounts of all discount rates, processing surcharges, cancellation fees, and other fees consumers will be required to pay.

C. Altering or adding to documents previously signed by consumers so as to change material terms including, but not limited to, terms related to rates and fees to be incurred by the consumer, without the express consent of the consumer;

D. Concealing or failing to disclose clearly and conspicuously to consumers any terms of a contract;

E. Failing to furnish to a consumer a complete copy of any contract or document signed by a consumer at the time the contract or document is signed.

F. Assisting others who violate any provision of Paragraph II of this Final Order.

III.

Prohibited Disclosure of Customer Information

IT IS FURTHER ORDERED that Defendant, his successors and assigns, and his officers, agents, directors, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address,

telephone number, Social Security number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to Defendants or any one of them at any time prior to entry of this Final Order for card processing goods or services. *Provided that*, Defendant may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV.
Redress and Other Equitable Relief

IT IS FURTHER ORDERED that

A. Judgment is hereby entered against Defendant, jointly and severally with the other Defendants named in this action, in the amount of \$26,480,041 (twenty-six million, four hundred eighty thousand, forty-one dollars).

B. Judgment shall be suspended subject to the following conditions:

1. Defendant hereby agrees to the appointment of Michael A. Grassmueck as Permanent Receiver (“Receiver”) over Merchant Processing, Inc.; Vequity Financial Group, Inc.; Direct Merchant Processing, Inc.; and Merchant Services, Inc., Oregon corporations, and their affiliates and subsidiaries, and any other corporations or businesses under the control of any of them or under the control of Rian at any time prior to entry of this Final Order, including but not limited to Bad Boy Enterprises, Inc., d.b.a. Atlantic Hound; Bad Boy Racing, LLC; Bad Boy Investments, LLC; and Rian Racing, Inc., with all of the same rights, duties and powers as set forth in the November 2, 2007, Second Stip. PI, which continued the appointment of Michael A. Grassmueck as Temporary Receiver over all of the Receivership Defendants in this matter.

2. Defendant hereby agrees to release to the Receiver any interest he might have in

any of the Receivership Defendants, including their respective Merchant Account Portfolios, and in all accounts, property, and assets held in the name of the Receivership Defendants.

3. Pursuant to the terms and conditions agreed to by the parties, Defendant hereby agrees to release to the Receiver for ultimate sale any interest he has in real property located at 17481 SW Hoodoo Court, Beaverton, OR 97007-7702; 184 N. Pacific St., Rockaway Beach, OR 97136 (“Oregon properties”); and 40332 SCR 4545, Keota, Oklahoma (“Oklahoma property”). This release, if it has not already occurred, shall be made within ten (10) days of entry of this Final Order.

4. Proceeds from the sale of the Receivership Defendants and the balances held in Receivership Defendants’ accounts, as well as proceeds from the sale of the Oregon properties and the Oklahoma property, and all other property released to and sold by the Receiver in this matter shall be paid to the Commission pursuant to the Final Judgment and Order for Permanent Injunction as to the Receivership Defendants (“Final Order as to Receivership Defendants”) filed concurrently with this Final Order, and shall be credited against the amount of the judgment owed by Defendant as set forth in Subparagraph IV.A, *provided that* the Receiver may deduct his costs and fees as approved by the Court.

5. All funds paid pursuant to this Paragraph and the Final Order as to Receivership Defendants shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to restitution and any attendant expenses for the administration of any restitution fund. In the event that direct restitution to consumers is wholly or partially impracticable or funds remain after restitution 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 the practices alleged in the Complaint. Any funds up to the amount specified in Subparagraph IV.A not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Paragraph. No portion of any payments or assets assigned under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

6. If, after all funds are paid and released pursuant to Subparagraph IV.B, the total funds paid to the Commission pursuant to Subparagraph IV.B are insufficient to satisfy the judgment set forth in Subparagraph IV.A, the remainder of the monetary judgment shall be deemed suspended subject to the terms set forth in Paragraph V (Termination of Suspension). If the judgment has been satisfied in full pursuant to payments and releases under Subparagraph IV.B and the Receiver's Court-approved expenses are paid, then Defendant shall be given dominion, title, and control over any remaining monies and assets in direct proportion to the amount he paid pursuant to Subparagraph IV.B.

C. Defendant's personal account now held in Trust by Inverness Group LLC, and any other remaining personal assets that were frozen pursuant to the orders entered in this case shall be unfrozen upon entry of this Final Order.

D. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless he has done so already, to furnish the Commission with his Social Security number, which shall be used for purposes of collection and reporting on any delinquent amount arising out of Defendant's relationship with the government.

V.
Termination of Suspension

IT IS FURTHER ORDERED that the Commission's agreement to this Final Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's financial condition as represented in the sworn financial statements, including attachments, dated May 10, 2007, and November 26, 2007 ("financial statements"), which include material information upon which the Commission relied in negotiating and agreeing to the terms of this Final Order. If, upon motion by the Commission to the Court, the Court finds that the Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from his financial statements, the suspension of the monetary judgment will be terminated and the entire judgment amount of \$26,480,041.00 set forth in Subparagraph IV.A of this Final Order, will become immediately due and payable less any payments already made. *Provided, however*, that in all other respects this Final Order shall remain in full force and effect, unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under this Paragraph V are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Final Order. For the purposes of this Paragraph, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Defendant waives any right to contest any of the allegations set forth in the Complaint filed in this matter or the \$26,480,041.00 judgment referenced in Subparagraph IV.A of this Final Order.

VI.
Compliance Monitoring

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, the Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry to any Commission representative during normal business hours to any business location in the Defendant's possession or direct or indirect control for the purpose of inspecting the business location; *provided that* the Defendant, after attempting to resolve a dispute 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 Commission is authorized to monitor compliance with this Final Order by all other lawful means, including but not limited to the following:

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 Defendant or his employees, or any other entity managed or controlled in whole or in part by the Defendant, without the necessity of identification or prior notice; and

C. Defendant shall permit representatives of the Commission 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 the Final Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, 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)).

VII.
Compliance Reporting by Defendant

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

- A. For a period of five (5) years from the date of entry of this Final Order, the Defendant shall notify the Commission of the following:
1. Any changes in residence, mailing addresses, and telephone numbers of the Defendant, within ten (10) days of the date of such change;
 2. Any changes in employment status (including self-employment) of the Defendant, and any change in the ownership of the Defendant in any business entity, excluding any minority or non-controlling interest in a publicly traded company, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the Defendant's duties and responsibilities in connection with the business or employment;
 3. Any changes in the Defendant's name or use of any aliases or fictitious names;
 4. Any changes in the corporate structure of any business entity that Defendant directly or indirectly control(s), or has an ownership interest in, that may affect

compliance obligations arising under this Final Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final 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 the 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 Final Order, the Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Final Order. This report shall include, but not be limited to:

1. The Defendant's then-current residence address, mailing addresses, and telephone numbers;
2. The Defendant's then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and the title and responsibilities of the Defendant, for each such employer or business;
3. A copy of each acknowledgment of receipt of this Final Order, obtained pursuant to Paragraph IX; and
4. Any other changes required to be reported under Subparagraph A of this Paragraph;

C. For the purposes of this Final Order, Defendant shall, unless otherwise directed

by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director of Enforcement
Federal Trade Commission
601 New Jersey Ave., N.W.
Washington, DC 20001
Re: FTC v. Merchant Processing, Inc., et al., CV07-0533 BR;

D. For purposes of the compliance reporting and monitoring required by this Final Order, the Commission is authorized to communicate directly with Defendant.

VIII.
Record Keeping

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Order, the Defendant, in connection with any business where (1) he is the majority owner, or directly or indirectly manages or controls the business, and (2) the business is engaged in conduct related to the subject matter of this Final Order, is 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 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 Final Order including, but not limited to, copies of acknowledgments of receipt of this Final Order required by Paragraph IX of this Final Order, and all reports submitted to the FTC pursuant to Paragraph VII of this Final Order.

IX.
Distribution of Order by Defendant

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, the Defendant shall deliver copies of this Final Order as directed below:

A. For any business that the Defendant controls, directly or indirectly, or in which the Defendant has a majority ownership interest, the Defendant must deliver a copy of this Final Order to all principals, officers, directors, and managers of that business. The Defendant must also deliver copies of this Final Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Final Order. For current personnel, delivery shall be within five (5) days of service of this Final Order upon the Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities;

B. Defendant must secure a signed and dated statement acknowledging receipt of this Final Order, within thirty (30) days of delivery, from all persons receiving a copy of the Final Order pursuant to this Paragraph.

X.

Acknowledgment of Receipt of Order by Defendant

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

XI.

Cooperation with FTC Counsel

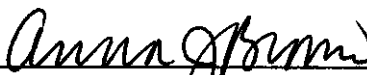
IT IS FURTHER ORDERED that Defendant shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear, or cause his officers, employees, representatives, or agents to appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and such other matters as may be reasonably required by the FTC. If requested in writing by the FTC, Defendant shall appear, or cause his officers, employees, representatives, or agents to appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

XII.

Retention of Jurisdiction

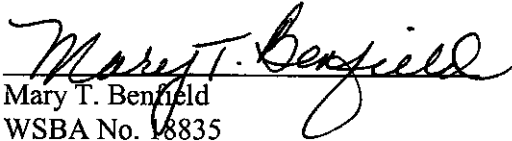
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Final Order.

SO ORDERED, this 2nd day of May, 2008.



The Honorable Anna J. Brown
United States District Judge

So Stipulated:



Mary T. Benfield
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Aaron Lee Rian, individually and as
President of MERCHANT PROCESSING, INC.,
VEQUITY FINANCIAL GROUP, INC., and
DIRECT MERCHANT PROCESSING, INC.