

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE
COMMISSION, et al.,

Plaintiffs,

v.

CASE NO. 8:15-cv-1417-T-23AEP

E.M. SYSTEMS
& SERVICES, LLC., et al.,

Defendants.

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ORDER

The Federal Trade Commission and the Florida Attorney General sue (Doc. 58) sixteen defendants under the Florida Deceptive and Unfair Trade Practices Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, and Sections 13(b) and 19 of the FTC Act. The plaintiffs and the E.M. Systems defendants stipulate to the injunctive and monetary relief in this order.¹

DEFINITIONS

A. “ACH Debit” means any attempted or completed debit to a person’s account at a financial institution that is processed electronically through the Automated Clearing House Network.

B. “Acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card

¹ E.M. Systems & Services, LLC; Administrative Management & Design, LLC; KLS Industries, LLC, d/b/a Satisfied Services Solutions, LLC; Empirical Data Group Technologies, LLC; Epiphany Management Systems, LLC; Steven D. Short, and Karissa L. Dyar comprise the E.M. Systems defendants.

system (e.g., Visa, MasterCard, American Express, and Discover) to authorize a merchant to accept, to transmit, or to process a payment by credit card through the credit card system for money, goods or services, or another valuable item.

C. “Chargeback” means a procedure in which an issuing bank or other financial institution charges all or part of a person’s credit or debit card transaction back to the acquiring or merchant bank.

D. “Client” means a person who obtains directly or indirectly from an E.M. Systems defendant a merchant account or a person for whom an E.M. Systems defendant acts directly or indirectly as a sales agent.

E. “Credit card laundering” means:

1. Presenting or depositing into, or causing another to present or to deposit into, the credit card system for payment a Credit Card Sales Draft if the underlying transaction is not between the cardholder and the merchant;

2. Employing, soliciting, or allowing a merchant, or an employee, representative, or agent of a merchant, to present to or to deposit into the credit card system for payment a Credit Card Sales Draft if the underlying transaction is not between the cardholder and the merchant;

3. Obtaining access to the credit card system through a business relation with a merchant when the access is not authorized by the merchant account or by the applicable credit card system.

F. “Credit Card Sales Draft” means any record or evidence of a credit card transaction.

G. “Debit Relief Product or Service” means any product, service, or plan represented to re-negotiate, to settle, or to alter a term of payment or another term of the debt between a person and an unsecured creditor or debt collector, including a reduction in balance, interest rate, or fee.

H. “E.M. Systems defendants” means all of the E.M. individuals and E.M. LLCs individually, collectively, or in any combination.

I. “E.M. individuals” means Karissa L. Dyar and Steven D. Short.

J. “E.M. LLCs” means E.M. Systems & Services, LLC; Administrative Management & Design, LLC; KLS Industries, LLC, d/b/a Satisfied Service Solutions, LLC; Empirical Data Group Technologies, LLC; Epiphany Management Systems, LLC; and their successors, assigns, and any fictitious business entity or name used by the entity, including Applied Budgeting; Bigger Budget; Competitive Budgeting; Complete Budgeting; Conserved Budgeting; Consigned Savings; Containing Expenses; Debt Smart Solutions; Decisive Budgeting; Efficient Budgeting; Insightful Budgeting; Intuitive Budgeting; Less Costly Living; Living Competitively; Lowered Expenses; Prepared Budgeting; Reduced Expenses; Resourceful Budgeting; Sensible Budgeting; Skilled Budgeting; Spend Less Monthly; Total Budgeting; Today’s Financial Living; Your Household Budget; and Your Next Financial Step.

K. “Independent sales organization” (“ISO”) means a person who enters into an agreement with a Payment Processor to sell or to market payment processing services to a merchant and who holds full or partial liability for a loss related to the payment processing activities conducted by or on behalf of the merchant.

L. “Outbound telemarketing” means any plan, program, or campaign to induce the purchase of a good, service, or charitable contribution by phone and which involves a phone call initiated by a telemarketer even if not covered by the Telemarketing Sales Rule.

M. “Merchant” means a person who may, under a written contract with an Acquirer, honor or accept a credit card, or transmit or process a credit card payment, for the purchase of a good, service, or charitable contribution.

N. “Merchant account” means an account with an Acquirer that authorizes a merchant to honor or to accept a credit card, or to transmit or process for payment a credit card, for the purchase of a good, service, or charitable contribution.

O. “Payment processing” means providing a person with the means to charge or to debit an account through a payment mechanism, including a Remotely Created Payment Order, an ACH Debit, or a debit, credit, prepaid, or stored value card. Payment processing includes reviewing and approving a merchant application for payment processing services; providing the means to transmit sales transaction data from a merchant to an acquiring bank or to another financial institution; clearing,

settling, or distributing a proceed of a transaction from an acquiring bank or from a financial institution to a merchant; or processing a chargeback or returned Remotely Created Payment Order or ACH Debit.

P. "Payment processor" means a person providing payment processing services in connection with a charitable contribution or in connection with another person's sale of a good or service.

Q. "Person" means an individual, group, unincorporated association, limited or general partnership, corporation, or entity.

R. "Receivership defendants" mean the E.M. Systems defendants, One Easy Solutions, LLC, and Christopher C. Miles.

S. "Remotely Created Payment Order" means any check, draft, payment instruction, or payment order drawn on a payor's account, initiated or created by or on behalf of the payee, and deposited into or cleared through the check clearing system. An account includes any financial account, credit account, or another arrangement that permits drawing of a check or payment instruction through or at a bank.

T. "Sales agent" means a person who matches, arranges, or refers a prospective client to a payment processor or ISO for payment processing but holds no contractual liability for a loss related to a payment processing activity conducted by or on behalf of a client. A sales agent may recommend a particular payment processor or ISO to a prospective client, may forward to the payment process or ISO a prospective client's merchant application, and may negotiate the fee charged by a payment processor or ISO, but a sales agent may not act as an ISO.

I. Ban on outbound telemarketing

The E.M. Systems defendants must not conduct or assist another in conducting outbound telemarketing.

II. Ban on marketing a debt relief product or service

The E.M. Systems defendants must not advertise, market, promote, or offer for sale any Debt Relief Product or Service and must not assist another in the preceding acts.

III. Ban on misrepresentation

The E.M. Systems defendants, and an officer, agent, employee, or attorney of an E.M. Systems defendant, must not misrepresent or assist another in misrepresenting either expressly or impliedly in connection with the advertisement, promotion, or sale of a good or service:

- A. The total cost to purchase, to receive, or to use a good or service;
- B. That a person is affiliated with, endorsed or approved by, or connected to another person;
- C. A term of a policy about a refund, cancellation, exchange, or re-purchase;
- D. A material aspect of the product or service's performance, efficacy, or nature.
- E. A material fact.

IV. Ban on credit card laundering

The E.M. Systems defendants, and an officer, agent, employee, or attorney of an E.M. Systems defendant, must not launder a credit card in connection with the advertisement, marketing, promotion, or sale of a good or service. But an E.M. Systems defendant may open, operate, and utilize a merchant account to accept a

credit card, to transmit, or to process for payment a credit card in connection with the sale by an E.M. Systems defendant of a good or service.

V. Ban on unsubstantiated claims

The E.M. Systems defendants, and an officer, agent, employee or attorney of an E.M. Systems defendant, must not represent expressly or impliedly a claim about the performance, efficacy, or benefit of a good or service unless the E.M. Systems defendant relies upon competent evidence to substantiate the claim's truth.

VI. Ban on acting as an ISO or sales agent

An E.M. Systems defendant must not act as an ISO or Sales Agent for a client.

VII. Monetary relief

The clerk is directed to enter a judgment in the amount of \$12,365,731 for the Federal Trade Commission and the Office of the Attorney General, State of Florida, Department of Legal Affairs, and against the E.M. Systems defendants jointly and severally.

To satisfy partially the judgment, within ten days of receipt of this order Bank of America, N.A., must transfer the asset or account below to the Receiver, who must instruct Bank of America about the form of the asset transfer.

1. Account ending in 6626, held in the name of Karissa L. Dyar and Steven D. Short;
2. Account ending in 5777, held in the name of Steven D. Short;
3. Account ending in 3460, held in the name of Karissa L. Dyar;
4. Account ending in 2032, held in the name of Karissa L. Dyar.

The E.M. Systems defendants relinquish legal and equitable right, title and interest in an asset surrendered to the Receiver, including the money in the above accounts, and the E.M. Systems defendant may not seek return of a surrendered asset.

The Receiver may move for reasonable compensation. The Receiver must transfer to the plaintiffs any asset remaining after the Receiver is compensated. An asset described in this section applies to the judgment ordered above. The remainder of the judgment is suspended in accord with the following conditions.

Plaintiffs agree to the partial suspension of the judgment against the E.M. Systems defendants only if the financial representations in the following documents are truthful, accurate, and complete:

1. June 22, 2015 financial statement of Karissa Dyar and attachments to the statement;
2. June 22, 2015 financial statement of Steven D. Short and attachments to the statement;
3. June 22, 2015 corporate financial statement of Administrative Management & Design, LLC;
4. June 22, 2015 corporate financial statement of Empiracle [sic] Data Group Technologies, LLC;
5. June 22, 2015 corporate financial statement of Epiphany Management Systems, LLC;
6. June 22, 2015 corporate financial statement of KLS Industries, LLC;
7. June 22, 2015 corporate financial statement of E.M. Systems & Services, LLC.

If an order finds that an E.M. Systems defendant materially misstated, or failed to disclose, either a material asset or an asset's value, the order will re-instate the judgment.

If re-instated as to an E.M. Systems defendant, the judgment is due immediately as to that defendant. For this section only, the parties stipulate that the judgment amount represents the alleged consumer injury plus post-judgment interest less a payment ordered in this section.

In any civil litigation by or on behalf of plaintiffs, including a proceeding to enforce the judgment and a non-dischargeability claim in a bankruptcy action, the E.M. Systems defendants may not dispute the truth of the complaint's factual allegations.

The E.M. Systems defendants permit the use, in accord with 31 U.S.C. § 7701, of a Taxpayer Identification Number, i.e., a Social Security Number or Employer Identification Number, for the collection and the reporting of a delinquent amount of the judgment.

The plaintiffs may deposit money paid in satisfaction of the judgment into a fund administered by the FTC or its designee and used for equitable relief, including consumer redress and the expenses of administering the redress program. If redress is impracticable or if money remains after completion of the redress program, the plaintiffs may use the money for other equitable relief, i.e., a consumer information remedy, that is reasonably related to the E.M. Systems defendants' allegedly

deceptive practices. The plaintiffs may divide equally any money not used for consumer redress or for equitable relief. The FTC must deposit its half in the U.S. Treasury and the Florida Attorney General must deposit its half in the Florida Attorney General Department of Legal Affairs' Escrow Fund. The E.M. Systems defendants may not challenge any expense under this section by the plaintiffs.

VIII. Removal of asset freeze

The freeze of the E.M. Systems defendants' assets is lifted to permit the transfer of assets in accord with this order. The asset freeze will dissolve after the completion of the asset transfers ordered above. A third party may rely upon a letter from the plaintiffs stating that an order lifts the freeze on the E.M. Systems defendants' assets.

IX. Receivership

The Receivership established by the June 30, 2015 order (Doc. 28) continues. In accord with the June 30 order, the Receiver may seek reasonable compensation from the Receivership for performing his duties.

X. Customer information

The E.M. Systems defendants and an officer, agent, employee, or attorney of an E.M. Systems defendant must provide within fourteen days of a plaintiff's written request any customer information relevant to redress.

For information obtained (before entry of this order) by an E.M. Systems defendant in connection with a Debt Relief Product or Service, the E.M. Systems

defendant and an officer, agent, employee, or attorney of an E.M. Systems defendant must not disclose or use customer information, which includes a name, address, telephone number, e-mail address, Social Security number, or any data that permits access to a customer's credit card, bank, or other financial account. And, if directed in writing by a plaintiff, an E.M. Systems defendant must destroy any of the above information within thirty days of receipt of the directive. But a defendant need not destroy, and may disclose, customer information if required by law to preserve or to disclose the information.

XI. Cooperation

The E.M. Systems defendants must cooperate fully with the plaintiffs in this action and in any investigation related to this action. The E.M. Systems defendants must provide truthful and complete information, evidence, and testimony, and must appear (and must direct an officer, employee, representative, or agent of an E.M. Systems defendant to appear) for an interview, hearing, discovery, trial, or another proceeding if the plaintiff provides at least five days' written notice and if the subject of the proceeding relates to the allegations in this action. If appropriate, an E.M. Systems individual may invoke the Fifth Amendment privilege against self-incrimination.

XII. Acknowledgment

Within seven days of receiving this order, each E.M. Systems defendant must submit to the plaintiffs a sworn acknowledgment that the defendant received the order.

For five years after entry of this order, each E.M. individual, for any business that he owns individually or collectively with another E.M. Systems defendant and for which business the defendant owns or controls a majority share, must deliver this order to the business's principals, officers, directors, and LLC managers and members, to all employees, agents, and representatives who participate in conduct related to the subject of this action; and to any business entity resulting from a change in structure (as explained in the compliance reporting section of this order). For current personnel, the defendant must deliver this order within seven days of the order's entry. For all others, the defendant must deliver this order before assuming responsibility. For each person described above, the defendant must obtain and deliver within seven days an acknowledgment that the person received the order.

XIII. Compliance reporting

A year after entry of this order, each E.M. Systems defendant must submit a sworn compliance report which includes:

1. The defendant's telephone number and primary physical, postal, and e-mail address.
2. For the E.M. corporations, a designated contact;
3. A list of the defendant's businesses and the names, telephone numbers, and physical, postal, e-mail, and Internet addresses of the business;
4. For each business listed in accord with the instruction above, a description of the business's activity, including the good or service offered; the means of advertising, marketing, and sales; and a list of every other E.M. Systems defendant involved with the business.

5. A detailed explanation whether and why the defendant is compliant with this order.

Also, each E.M. individual must identify all of the individual's telephone numbers and physical, postal, e-mail, and Internet addresses; identify all business activities; and describe in detail the individual's involvement in the business, including the individual's title, role, responsibilities, and ownership interest.

For twenty years after entry of this order, each E.M. Systems defendant must submit a sworn compliance notice within fourteen days of any change in:

1. The designated contact;
2. The structure of the E.M. LLC or an entity in which the E.M. Systems defendant has or acquires an interest, including a merger, sale, incorporation, dissolution, or any of the preceding that involves a parent, subsidiary, or affiliate engaged in any act that is the subject of this action.
3. For an E.M. individual, the individual's name (including an alias) or residence; and the role in any business activity or the individual's title in any business.

Each E.M. Systems defendant must notify plaintiffs about the filing of a bankruptcy petition or an insolvency proceeding by or against the defendant within fourteen days of the petition's filing.

Unless a plaintiff requests differently, a defendant must submit a document or statement required by this order to the FTC at Debrief@ftc.gov with subject line "FTC v. E.M. Systems, X150051." Or the defendant may submit the document by overnight courier to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington,

D.C., 20580. Also, the defendant must submit the document or statement to the Florida Attorney General at cpenforcement@myfloridalegal.com or mail the document to the Office of the Attorney General, Director of Consumer Protection Division, 3507 East Frontage Road #325, Tampa, Florida 33607.

Any sworn statement to the plaintiffs must comply with 28 U.S.C. § 1746.

XIV. Recordkeeping

For a business owned or controlled in majority share by an E.M. Systems defendant, the defendant must create the following documents for twenty years after entry of this order:

1. An account record that shows the revenue from all goods and services sold;
2. A personnel record that shows each employee or contractor's name, address, telephone number, job title, dates of service, and if applicable the reason for termination;
3. A record of every consumer complaint and refund request received by the defendant and the defendant's response;
4. Any record necessary to demonstrate compliance with this order, and;
5. A copy of each unique advertisement or other marketing material.

XV. Compliance monitoring

Within fourteen days of a written request from a plaintiff, an E.M. Systems defendant must submit a sworn compliance report or other information requested by the plaintiff and must produce a requested document. Without requesting leave of

court, a plaintiff may obtain discovery under Rules 29, 30, 31, 33, 34, 36, 45, and 69, Federal Rules of Civil Procedure, if the discovery request relates to this order or to the complaint in this action. Also, the FTC may invoke compulsory process under Sections 9 and 20 of the FTC Act.

The E.M. Systems defendants must permit a representative of a plaintiff to interview any employee or another individual affiliated with an E.M. Systems defendant if the person agrees to the interview. The person's counsel may appear at the interview.

After written request from a plaintiff and in accord with Section 604(1) of the Fair Credit Reporting Act, a consumer-reporting agency must provide the plaintiff a consumer report about an E.M. individual.

XVI. Jurisdiction retained

Jurisdiction is retained to enforce this order.

ORDERED in Tampa, Florida, on January 17, 2017.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE