

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION and
OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiffs,

v.

Case No.: 8:15-cv-1417-T-23AEP

E.M. SYSTEMS & SERVICES, LLC, a Florida limited liability company; **ADMINISTRATIVE MANAGEMENT & DESIGN, LLC**, a Florida limited liability company; **KLS INDUSTRIES, LLC**, d/b/a **SATISFIED SERVICE SOLUTIONS, LLC**, a Florida limited liability company; **EMPIRICAL DATA GROUP TECHNOLOGIES, LLC**, a Florida limited liability company; **EPIPHANY MANAGEMENT SYSTEMS, LLC**, a Florida limited liability company; **STEVEN D. SHORT**, an individual; **KARISSA L. DYAR**, an individual; **ONE EASY SOLUTION LLC**, a Florida limited liability company; **CHRISTOPHER C. MILES**, an individual; **JASON E. GAGNON**, an individual; **KENNETH A. SALLIES**, an individual; **MATTHEW B. THOMAS**, an individual; **CARDREADY, LLC**, a California limited liability company; **BRANDON A. BECKER**, an individual; **JAMES F. BERLAND**, an individual; and **ANDREW S. PADNICK**, an individual,

Defendants.

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND MONETARY
JUDGMENT AGAINST DEFENDANT ANDREW S. PADNICK**

Plaintiffs Federal Trade Commission (“Commission” or “FTC”) and Office of the Attorney General, State of Florida, Department of Legal Affairs (“Florida Attorney General”) filed its *First Amended Complaint for Permanent Injunction and Other Equitable Relief* (“Amended Complaint”) against Defendants CardReady, LLC, Brandon A. Becker, James F.

Berland, and Andrew S. Padnick (the “CardReady Defendants”) for a permanent injunction and other equitable relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b; the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108 and the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Florida Statutes (2015).

Plaintiffs and Andrew S. Padnick (“Settling Defendant”) stipulate to the entry of this *Stipulated Order for Permanent Injunction and Monetary Judgment Against Defendant Andrew S. Padnick* (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Amended Complaint charges that Settling Defendant participated in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC’s Trade Regulation Rule entitled Telemarketing Sales Rule (“TSR” or “Rule”), 16 C.F.R. Part 310, and FDUTPA by his involvement in a credit card laundering scheme that processed sales transactions for other defendants in this matter.
3. The Amended Complaint also charges that Settling Defendant provided substantial assistance or support to Defendants Steven D. Short (“Short”) and E.M. Systems & Services, LLC (“E.M. Systems”), whom Settling Defendant knew, or consciously avoided knowing, were engaged in violations of the TSR, and charges that these acts or practices are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(b), and FDUTPA.
4. Settling Defendant neither admits nor denies any of the allegations in the Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling

Defendant admits the facts necessary to establish jurisdiction.

5. Settling Defendant waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees.

6. Settling Defendant and Plaintiffs waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

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

- A. **“ACH Debit”** means any completed or attempted 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 system (*e.g.* Visa, MasterCard, American Express, and Discover) to authorize Merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.
- C. **“CardReady Defendants”** means all of the Individual Defendants and the Corporate Defendant, individually, collectively, or in any combination.
- D. **“Chargeback”** means a procedure whereby an issuing bank or other financial institution charges all or part of an amount of a Person’s credit or debit card transaction back to the acquiring or merchant bank.
- E. **“Client”** means any Person (a) who obtains, directly or indirectly, from Settling Defendant a Merchant Account; or (b) for whom any Settling Defendant acts as a Sales Agent,

either directly or indirectly.

F. **“Corporate Defendant”** means CardReady, LLC and its successors and assigns.

G. **“Credit Card Laundering”** means:

(a) Presenting or depositing into, or causing or allowing another to present or deposit into, the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant;

(b) Employing, soliciting, or otherwise causing or allowing a Merchant, or an employee, representative, or agent of a Merchant, to present to or deposit into the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant; or

(c) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a Merchant, when such access is not authorized by the Merchant Account agreement or the applicable credit card system.

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

I. **“Debt Relief Product or Service”** means any product, service, plan or program represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a Person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a Person to an unsecured creditor or debt collector.

J. **“Independent Sales Organization”** or **“ISO”** means any Person that (a) enters into an agreement or contract with a Payment Processor to sell or market Payment Processing services to

a merchant; and (b) holds, directly or indirectly, either partial or full liability in the event of losses related to the Payment Processing activities conducted by or on behalf of the merchant.

K. **“Individual Defendants”** means Brandon A. Becker, James F. Berland, and Andrew S. Padnick.

L. **“Merchant”** means a Person who is authorized under a written contract with an Acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

M. **“Merchant Account”** means an account with an Acquirer that authorizes and allows a Merchant to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. ”

N. **“Payment Processing”** means providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment mechanism, including, but not limited to, Remotely Created Payment Orders; ACH Debits; or debit, credit, prepaid, or stored value cards. Whether accomplished through the use of software or otherwise, Payment Processing includes, among other things: (a) reviewing and approving merchant applications for payment processing services; (b) providing the means to transmit sales transaction data from merchants to acquiring banks or other financial institutions; (c) clearing, settling, or distributing proceeds of sales transactions from acquiring banks or financial institutions to merchants; or (d) processing Chargebacks or returned Remotely Created Payment Orders or ACH Debits.

O. **“Payment Processor”** means any Person providing Payment Processing services in connection with another Person’s sale of goods or services or in connection with any charitable contribution.

P. **“Person”** means an individual, partnership, corporation, entity, association or

organization.

Q. **“Remotely Created Payment Order”** means any check, draft, payment instruction, or payment order, whether written or electronic format, that is 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. For purposes of this definition, an account includes any financial account or credit or other arrangement that allows checks, payment instructions, or orders to be drawn against it that are payable by, through, or at a bank.

R. **“Sales Agent”** means a Person that matches, arranges, or refers a prospective Client or Clients to a Payment Processor or ISO for Payment Processing, but does not hold any contractual liability in the event of losses related to the Payment Processing activities conducted by or on behalf of Clients. As such, a Sales Agent may be involved in recommending a particular Payment Processor or ISO to a prospective Client, forwarding to the Payment Processor or ISO a prospective Client’s or Client’s merchant application, or negotiating rates and fees charged by a Payment Processor or ISO, but a Sales Agent may not be involved in any Payment Processing and may not act as an ISO.

I.

PROHIBITION AGAINST CREDIT CARD LAUNDERING

IT IS ORDERED that Settling Defendant, whether acting directly or indirectly, is permanently restrained and enjoined from Credit Card Laundering.

II.

**PROHIBITION AGAINST PAYMENT PROCESSING
OR ACTING AS AN ISO OR SALES AGENT FOR ANY MERCHANT**

IT IS FURTHER ORDERED that Settling Defendant, whether acting directly or indirectly, is permanently restrained and enjoined from Payment Processing or acting as an ISO or Sales Agent for any Merchant.

III.

PROHIBITION AGAINST ASSISTING AND FACILITATING

IT IS FURTHER ORDERED that Settling Defendant, whether acting directly or indirectly, is permanently restrained and enjoined from providing substantial assistance or support to any Person that he knows, or should know, is engaged in:

- A. Making, or assisting others in making, directly or by implication, any false or misleading statement in order to obtain Payment Processing services;
- B. Misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of any goods and services;
- C. Misrepresenting, directly or by implication, any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policies;
- D. The unauthorized debiting or charging of consumer bank or credit card accounts;
- E. Any deceptive, unfair, or abusive act or practice prohibited by Section 5 of the FTC Act or by the TSR or FDUTPA; or
- F. Any tactics to avoid fraud and risk monitoring programs established by any financial institution, acquiring bank, or the operators of any payment system, including, but not limited to, balancing or distributing sales transaction volume or sales, transaction activity among multiple Merchant Accounts or merchant billing descriptors; splitting a single sales transaction into

multiple smaller transactions; or using shell companies to apply for a Merchant Account.

IV.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$437,199.33 (Four Hundred Thirty Seven Thousand One Hundred and Ninety Nine Dollars and Thirty Three Cents) is entered in favor of the Plaintiffs against the Settling Defendant.

B. Settling Defendant is ordered to pay to the Plaintiffs the sum of \$5,945.82 (Five Thousand and Nine Hundred Forty-Five Dollars and Eighty Two Cents) which, as Settling Defendant stipulates, its undersigned counsel holds in escrow for no purpose other than payment to the Plaintiffs. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission or Florida Attorney General's Office. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

C. Plaintiffs' agreement to the suspension of part of the judgment against Settling Defendant is expressly premised upon the truthfulness, accuracy, and completeness of the sworn financial statements and related documents (collectively, "financial representations") submitted to Plaintiffs, namely:

1. The Financial Statement of Andrew S. Padnick, signed on December 20, 2015, including the attachments;

2. The additional documentation submitted via email from Settling Defendant's counsel, Edward Glynn, to Commission counsel Nicholas M. May or Anna M. Burns:

- a. Dated March 18, 2016, attaching updated information about assets of Settling Defendant;
- b. Dated March 21, 2016, attaching copies of Settling Defendant's bank statements from December 2015 – March 2016.

D. The suspension of the judgment will be lifted if, upon motion by Plaintiffs, the Court finds that the Settling Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to the Settling Defendant in the amount specified in Subsection A above, which the parties stipulate only for purposes of this Section represents the unjust enrichment alleged in the Amended Complaint less any payment previously made pursuant to this Section plus interest computed from the date of entry of this Order.

G. The facts alleged in the Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of Plaintiffs, including in a proceeding to enforce their right to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

H. Settling Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

I. The facts alleged in the Amended Complaint establish all elements necessary to sustain an action by Plaintiffs pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

I. Settling Defendant acknowledges that his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which the Settling Defendant must submit to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

J. All money paid to the Plaintiffs pursuant to this Order may be deposited into a fund administered by Plaintiff Federal Trade Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If Plaintiffs decide that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, either Plaintiff may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Settling Defendant's practices alleged in the Amended Complaint. Any money not used for such equitable relief is to be divided equally between the Commission and the Florida Attorney General, with half to be deposited to the U.S. Treasury as disgorgement and half to be deposited to the Florida Attorney General Department of Legal Affairs Revolving Trust Fund as attorney's fees and costs and costs of ongoing monitoring and enforcement. Settling Defendant has no right to challenge any actions the Commission or the Florida Attorney General or their representatives may take pursuant to this Subsection.

V.

PROHIBITION ON USE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Settling Defendant, whether acting directly or indirectly, is permanently restrained and enjoined from:

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in

writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 14 days;

- B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any CardReady Defendant obtained prior to entry of this Order in connection with providing Payment Processing services for Steven Short or E.M. Systems; and
- B. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after entry of this Order.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VI.

COOPERATION

IT IS FURTHER ORDERED that Settling Defendant must fully cooperate with representatives of the Commission and the Florida Attorney General in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint. Settling Defendant must provide truthful and complete information, evidence, and testimony. Settling Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that the Commission or the Florida Attorney General's representative may reasonably request upon five (5) days' written notice, or other reasonable notice, at such places and times as the Commission or Florida Attorney General's representative may designate, without the service of a subpoena.

VII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Settling Defendant obtain acknowledgments of receipt of this Order:

A. Settling Defendant, within 7 days of entry of this Order, must submit to Plaintiffs an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Settling Defendant for any business that he, individually or collectively with any other CardReady Defendant, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Settling Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Settling Defendant makes timely submissions to the Plaintiffs:

A. One year after entry of this Order, Settling Defendant must submit a compliance report, sworn under penalty of perjury:

1. Settling Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of Plaintiffs may use to communicate with Settling Defendant; (b) identify all of Settling Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other CardReady Defendant (which Settling Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Settling Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to Plaintiffs.

2. Additionally, Settling Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years after entry of this Order, Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Settling Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any entity that Settling Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Settling Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such he performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Settling Defendant must submit to Plaintiffs notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against him within 14 days of its filing.

D. Any submission to Plaintiffs required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by Plaintiffs’ representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC et al. v. E.M. Systems, LLC, et al. (Defendant Andrew S. Padnick, Matter No. X150051). All submissions to the Florida Attorney General pursuant to this Order must be emailed to cpenforcement@myfloridalegal.com or sent to: Office of The Attorney General, Consumer Protection Enforcement Division, PL-01 The Capitol, Tallahassee, Florida 32399.

IX.

RECORDKEEPING

IT IS FURTHER ORDERED that Settling Defendant must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Settling Defendant for any business that Settling Defendant, individually or collectively with any other CardReady Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's name, addresses, telephone numbers, job title or position, dates of service, and (if applicable) the reason for termination;
- C. Records of all refund and Chargeback requests, whether received directly or indirectly, such as through a third party, and any response; and
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Plaintiffs.

X.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Settling Defendant's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of either Plaintiff, Settling Defendant must: submit additional compliance reports or other requested information,

which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. Plaintiffs are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Plaintiffs are authorized to communicate directly with Settling Defendant. Settling Defendant must permit representatives of the Commission or the Florida Attorney General's Office to interview any employee or other person affiliated with Settling Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Plaintiffs may use all other lawful means, including posing, through their representatives as consumers, suppliers, or other individuals or entities, to Settling Defendant or any individual or entity affiliated with Settling Defendant, without the necessity of identification or prior notice. Nothing in this Order limits 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.

XI.

RETENTION OF JURISDICTION

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

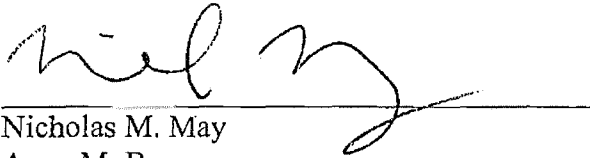
SO ORDERED this ___ day of _____, 2016.

UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFFS:

FEDERAL TRADE COMMISSION

A handwritten signature in black ink, appearing to read "Nicholas M. May", is written over a horizontal line.

Nicholas M. May

Anna M. Burns

Federal Trade Commission

Southeast Region

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Atlanta, Georgia 30303

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Tel: (404) 656-1350 (Burns)

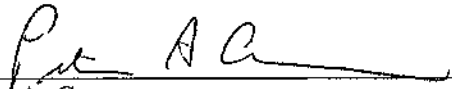
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OFFICE OF ATTORNEY GENERAL, STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS



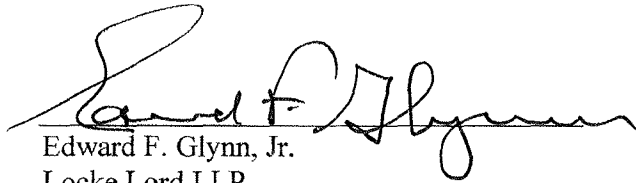
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Date: Aug. 1, 2016

COUNSEL for Andrew S. Padnick


ANDREW S. PADNICK

Date: 8/1/16