

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:13-MC-23437

_____)
FEDERAL TRADE COMMISSION,)
)
Petitioner,)
v.)
)
NATIONAL PROCESSING CO., and)
)
VANTIV, INC.,)
)
_____ Respondents.)

**PETITION OF THE FEDERAL TRADE COMMISSION FOR AN ORDER ENFORCING
CIVIL INVESTIGATIVE DEMANDS IN FURTHERANCE OF A LAW
ENFORCEMENT INVESTIGATION**

Preamble

Petitioner, the Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys and pursuant to Section 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 57b-1, petitions this Court for an Order requiring Respondents, National Processing Company (“NPC”) and Vantiv, Inc. (“Vantiv”) (collectively, the “Vantiv Entities”), to comply with civil investigative demands (“CIDs”) issued to them by the FTC.¹ The CIDs seek materials relevant to an ongoing Commission law enforcement investigation. Specifically, the

¹ A proposed Order Compelling Respondents to Comply with the Federal Trade Commission’s Civil Investigative Demands or To Show Cause Why They Failed To Do So is attached as Petition Exhibit 11.

Commission issued the CIDs to determine whether NPC and Vantiv may have assisted and facilitated a marketer of credit card interest-rate reduction services, A+ Financial Center, LLC (“A+ Financial”), while knowing, or consciously avoiding knowing, that A+ Financial was engaged in possible violations of the Commission’s Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310.

As discussed more fully in the accompanying memorandum, this CID enforcement proceeding is closely related to a case pending before the Hon. Donald L. Graham, *FTC v. A+ Financial Center, LLC, et al.*, No. 12-CV-14373-DLG (S.D. Fla.), in which the Commission has issued two Rule 45 Subpoenas to the Vantiv Entities. Those subpoenas seek the same documents that the Commission’s CIDs seek.² The Commission has moved to compel compliance with those subpoenas in the appropriate courts under Rule 45 and has asked that those motions be transferred to this district so all proceedings may be considered together in one forum. Because the standards that apply to enforcement of CIDs differ from the standards that apply to enforcement of Rule 45 subpoenas,³ the Commission filed this proceeding to ensure that its statutory investigative authority is fully taken into account as it pursues the documents that the Vantiv Entities refuse to produce. The Declaration of Bikram Bandy, which verifies the allegations of this Petition, is attached hereto as Petition Exhibit (“PX”) 1.

² The CIDs also contain a single interrogatory, requesting an explanation for any spoliation of responsive documents.

³ The proper scope of Rule 45 subpoenas is cabined by the scope of discovery allowed by Fed. R. Civ. P. 26(b) and the presiding judge. The reach of a CID is bounded only by the scope of the underlying investigation, which may be quite broad. *See e.g., United States v. Morton Salt*, 338 U.S. 632, 642-43 (1950).

Petition Allegations

In support of its Petition, the Commission alleges as follows:

1. The Commission is an administrative agency of the United States government, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prevent the use of unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The Commission is also authorized by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, and the rules promulgated under the authority of that Act, the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, to prevent deceptive or abusive telemarketing acts or practices.

2. Section 3 of the FTC Act, 15 U.S.C. § 43, empowers the Commission to prosecute any inquiry in any part of the United States. Section 6 of the Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate, from time to time, the organization, business, conduct, practices and management of any person, partnership or corporation engaged in or whose business affects commerce, with certain exceptions not relevant here. Section 20 of the FTC Act, 15 U.S.C. § 57b-1, empowers the Commission to require by CID the production of documents or other information relating to any Commission law enforcement investigation.

3. This Court has jurisdiction to enforce the Commission’s duly issued CIDs, including the CIDs issued to respondents, under Section 20(e) of the FTC Act, 15 U.S.C. § 57b-1(e), which provides in pertinent part:

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be

accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this subpoena.

4. A+ Financial is located in this district. Accordingly, both respondents, by providing payment processing services to A+ Financial, transact business in this district. (PX 1 at ¶¶ 3, 4, and 9).

5. Vantiv is a publicly traded company, incorporated in Delaware, with its principal place of business at 8500 Governor's Hill Drive, Symmes Township, Ohio 45249. From at least November 2010 through October 2012, acting alone or in concert with others, Vantiv provided credit card processing services to A+ Financial within the Southern District of Florida and oversaw, managed, and had input into the underwriting decisions made by its wholly owned subsidiary, NPC, including whether NPC should provide credit card processing services to A+ Financial. (PX 1 at ¶¶ 3 and 9).

6. NPC is a Nebraska corporation with its principal place of business at 5100 Interchange Way, Louisville, Kentucky 40229. NPC provides credit card payment-processing services to merchants. From December 2009 through October 2012, acting alone or in concert with others, NPC provided credit card processing services to A+ Financial within the Southern District of Florida. Since at least November 2010, NPC has been a wholly owned subsidiary of Vantiv. (PX 1 at ¶¶ 4 and 9).

7. On October 23, 2012, the FTC filed an action against A+ Financial and its principals alleging that they violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R. Part 310, by deceptively marketing credit card interest rate reduction services to consumers struggling with high credit card debt, illegally collecting an advance fee for their

purported services, and illegally using prerecorded calls to contact consumers. *See FTC v. A+ Financial Center, LLC, et al.*, No. 2:12-CV-14373-DLG, D.E. 1 (S.D. Fla. Oct. 23, 2012). (PX 1 at ¶¶ 5-8).

8. During the course of the A+ Financial litigation, the FTC learned that, from December 2009 until the business was shut down in October 2012, NPC processed the majority of the allegedly illegal advance fees that consumers paid to the A+ Financial defendants. Vantiv acquired NPC as a wholly-owned subsidiary in November 2010. (PX 1 at ¶ 9).

9. To investigate whether Vantiv and NPC may have violated the TSR by assisting and facilitating A+ Financial's alleged violations of the TSR, FTC staff asked NPC and Vantiv to produce voluntarily e-mail communications, underwriting files, and other documents relating to their processing of credit card transactions for A+ Financial and their role in, and knowledge of, the allegedly illegal acts and practices of the A+ Financial defendants. Vantiv and NPC refused to produce the requested documents on a voluntary basis. (PX 1 at ¶ 11).

10. Accordingly, on July 24, 2013, the Commission issued CIDs to Vantiv and NPC directing them to produce the requested materials no later than August 19, 2013. True and correct copies of the CIDs are attached hereto as PXs 2 and 3. The CIDs were issued pursuant to Commission resolution No. 123145, which authorizes the use of compulsory process under Section 20 of the FTC Act, 15 U.S.C. §57b-1:

[t]o determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in . . . deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support . . . to telemarketers engaged in unlawful practices.

(PXs 2 and 3).

11. The CIDs were signed by a Commissioner and served by the Commission's Secretary pursuant to the Commission's Rules. (PX 1 at ¶ 12). Each CID contains 14 identical document production specifications and a single interrogatory requesting an explanation for the spoliation, if any, of responsive documents, and were narrowly tailored to obtain information relevant to the Commission's inquiry regarding Vantiv's and NPC's activities with respect to a single merchant – A+ Financial. (*Id.*; PXs 2 and 3).

12. After receiving the CIDs, Vantiv and NPC held multiple teleconferences with FTC staff and requested modifications to the scope of certain requests set forth in the CIDs. Although FTC staff proposed modifications to certain requests to address their concerns, Vantiv and NPC did not comply. (PX 1 at ¶ 15). Instead, they filed a petition with the Commission seeking to quash the CIDs. A true and correct copy of the Vantiv Entities' petition to quash is attached hereto as PX 5. In their petition, Vantiv and NPC contended that the Commission was not authorized to issue the CIDs, given the pendency of Rule 45 subpoenas in the *A+ Financial* civil action.

13. On September 6, 2013, the Commission denied Vantiv's and NPC's petition to quash in its entirety and ordered Vantiv and NPC to produce the documents and information requested in the CIDs no later than September 13, 2013. A true and correct copy of the Commission's ruling is attached hereto as PX 7.

14. Vantiv and NPC did not comply with the Commission's ruling on the extended due date, nor did they respond to FTC staff's multiple inquiries concerning the status of the document production. (PX 1 at ¶ 18). True and correct copies of the relevant email exchanges are attached hereto as PXs 8 and 9.

15. To date, Vantiv and NPC have not provided Commission staff with the documents or information requested in the Commission's CIDs, despite the Commission's September 6, 2013 ruling denying their petition to quash and ordering production by September 13, 2013. Moreover, Vantiv and NPC also have not produced any documents in response to the Rule 45 subpoenas issued in the *A+ Financial* litigation either. (PX 1 at ¶ 22).

16. Vantiv's and NPC's failure to comply with the CIDs and to produce the requested documents and information has burdened, delayed, and impeded the Commission's investigation. (PX 1 at ¶ 23).

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel

DAVID C. SHONKA
Principal Deputy General Counsel

JOHN F. DALY
Deputy General Counsel for Litigation

LESLIE RICE MELMAN
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/S/ John Andrew Singer
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Attorneys

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. _____

FEDERAL TRADE COMMISSION,

Petitioner,

v.

NATIONAL PROCESSING COMPANY, and

VANTIV, INC.,

Respondents.

DECLARATION OF BIKRAM BANDY

(PETITION EXHIBIT 1)

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the United States Federal Trade Commission (“FTC” or “Commission”) in Washington, DC. I am the lead attorney of a Commission investigation of two credit card payment processors – Vantiv, Inc. (“Vantiv”), and its wholly-owned subsidiary, National Processing Company (“NPC”). The purpose of the investigation is to determine whether Vantiv or NPC violated the Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310.3(b), by assisting and facilitating TSR violations committed by one of its former merchant clients, A+ Financial Center, LLC (“A+ Financial”), formerly known as Accelerated Financial Centers, LLC.

2. I am authorized to execute a declaration verifying the facts that are set forth in the Petition of the Federal Trade Commission for an Order to Enforce Civil Investigative Demands

(“Petition”). I have read the Petition and attached exhibits (hereinafter referred to as “PX”), and verify that PXs 2 through 10 are true and correct copies of the original documents. The facts set forth herein are based on my personal knowledge or information made known to me in the course of my official duties.

RESPONDENTS

3. Vantiv is a publicly traded company, incorporated in Delaware, with its principal place of business at 8500 Governor’s Hill Drive, Symmes Township, Ohio 45249. From at least November 2010 through October 2012, acting alone or in concert with others, Vantiv provided credit card processing services to A+ Financial within the Southern District of Florida and oversaw, managed, and had input into the underwriting decisions made by its wholly-owned subsidiary, NPC, including whether NPC should provide credit card processing services to A+ Financial. Vantiv reported that its 2012 annual net revenue was \$1 billion.¹

4. NPC is a Nebraska corporation with its principal place of business at 5100 Interchange Way, Louisville, Kentucky 40229. NPC provides credit card payment-processing services to merchants. From December 2009 through October 2012, acting alone or in concert with others, NPC provided credit card processing services to A+ Financial within the Southern District of Florida. Since at least November 2010, NPC has been a wholly-owned subsidiary of Vantiv.

¹ See Vantiv 2012 Annual Report at 2 (available at <http://investors.vantiv.com/phoenix.zhtml?c=250843&p=irol-reportsannual>).

A+ FINANCIAL LITIGATION

5. On October 23, 2012, the FTC filed an action against A+ Financial and its principals (collectively, the “A+ Defendants”) alleging that they violated Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §45(a), and the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, by deceptively marketing credit card interest rate reduction services to consumers struggling with high credit card debt, illegally collecting an advance fee for their purported services, and illegally using prerecorded calls to contact consumers. *See FTC v. A+ Financial Center, LLC, et al.*, No. 2:12-CV-14373-DLG, D.E. 1 (S.D. Fla. Oct. 23, 2012).

6. Specifically, the Commission’s complaint alleges that during their telemarketing calls, the A+ Defendants would mask their identity by claiming to be “Card Services,” tricking consumers into thinking that the A+ Defendants were calling on behalf of their credit card issuer. The A+ Defendants would then guarantee that they could substantially reduce the interest rates on consumers’ credit cards if consumers paid an up-front fee ranging from \$495 to well over \$2,000. The complaint further alleges that in order to convince consumers to pay their hefty fee, the A+ Defendants made numerous misrepresentations and material omissions regarding the true nature of their services and that most consumers who paid the A+ Defendants’ hefty up-front fee ended up with little to show for it, as they saved little to no money, were unable to get out of debt any faster, and did not receive the lowered credit card interest rates the A+ Defendants promised.

7. At the FTC’s request, this Court entered a temporary restraining order on October 24, 2012 that, among other things, shut down A+ Financial’s business operations and placed the company under the control of a court-appointed receiver. *Id.*, (D.E. 10 in the A+ Financial Litigation). After an evidentiary hearing, this Court entered a preliminary injunction on

November 1, 2012, that kept in place the provisions of the temporary restraining order that shut down A+ Financial and placed the company into receivership. *Id.*, D.E. 23.

8. The A+ Financial litigation is still ongoing, and the preliminary injunction entered by the Court remains in effect.

INVESTIGATION OF VANTIV'S AND NPC'S ROLE IN A+ FINANCIAL SCHEME

9. During the course of the A+ Financial litigation, the FTC learned that, from December 2009 until the business was shut down in October 2012, NPC processed the majority of the allegedly illegal advance fees that consumers paid to the A+ Financial defendants. Vantiv acquired NPC as a wholly-owned subsidiary in November 2010.

10. The FTC also uncovered evidence indicating that Vantiv and NPC may have assisted and facilitated the A+ Financial defendants' alleged violations of the TSR by continuing to process credit card payments despite knowing, or consciously avoiding knowing, that the A+ Financial defendants were engaged in violations of the TSR. If so, Vantiv and NPC may be liable under the assisting and facilitating provision of the TSR, 16 C.F.R. § 310.3(b).

FTC'S EFFORTS TO OBTAIN DOCUMENTS FROM VANTIV AND NPC

11. To investigate whether either Vantiv or NPC violated the TSR, Commission staff asked NPC and Vantiv to produce voluntarily e-mail communications, underwriting files, and other documents relating to their processing of credit card transactions for A+ Financial and their role in, and knowledge of, the allegedly illegal acts and practices of the A+ Financial defendants. Vantiv and NPC refused to produce the requested documents voluntarily.

12. As a result, on July 24, 2013, the Commission issued CIDs to Vantiv and NPC seeking the relevant documents. (PXs 2 and 3). The CIDs were signed by a Commissioner and served by the Commission's Secretary pursuant to the Commission's Rules. Each CID contains

14 identical document production specifications and a single interrogatory requesting an explanation for the spoliation, if any, of responsive documents. (*Id.*) Both CIDs were narrowly tailored to obtain information relevant to the Commission's inquiry regarding Vantiv's and NPC's activities with respect to one merchant – A+ Financial. The CIDs required Vantiv and NPC to provide the FTC with the requested information by August 19, 2013. (*Id.*)

13. The CIDs were issued pursuant to Commission resolution No. 123145, which authorizes the use of compulsory process under Section 20 of the FTC Act, 15 U.S.C. §57b-1:

[t]o determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in . . . deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support . . . to telemarketers engaged in unlawful practices.

(*Id.*)

14. On August 6, 2013, after it issued the CIDs, the Commission also served Vantiv and NPC with subpoenas in the A+ Financial litigation pursuant to Rule 45 of the Federal Rules of Civil Procedure. The subpoenas contain the identical 14 document requests as the CIDs. The FTC issued these subpoenas, in part, because the presiding judge in the A+ Financial litigation had suggested that Commission counsel consider sharing any documents produced by Vantiv and NPC with the court-appointed receiver. However, due to statutory and regulatory restrictions, Commission counsel cannot readily share documents produced in response to a CID with the receiver.² The return date on the Rule 45 subpoenas was August 19, 2013 – the same return date for Vantiv's and NPC's responses to the CIDs.

² Documents produced to the Commission in response to a CID are non-public, and their disclosure is subject to various statutory and regulatory restrictions. 15 U.S.C. § 57b-2; 16

15. After the Commission served its CIDs on Vantiv and NPC, I had several telephone conferences with counsel for Vantiv and NPC to discuss the CIDs. During the course of those discussions, Vantiv's and NPC's counsel requested modifications to the scope of certain requests set forth in the CIDs to ease their burden in responding to the CIDs. On August 13, 2013, I sent Vantiv's and NPC's counsel a letter proposing modifications to certain requests to address their concerns. (PX 4). On August 15, 2013, Vantiv's and NPC's counsel sent me a letter stating that my proposed modifications were "workable." (PX 6). No final agreement as to modifications was ever reached because Vantiv and NPC ultimately refused to comply with the CIDs in their entirety.

VANTIV'S AND NPC'S REFUSAL TO PRODUCE DOCUMENTS

16. Despite our efforts to address the concerns of Vantiv and NPC regarding the scope of certain CID requests, on August 15, 2013, Vantiv and NPC jointly filed a petition with the Commission seeking to quash the CIDs. (PX 5). In their petition, Vantiv's and NPC's sole argument for quashing the CIDs was that the Commission's authority to issue the CIDs terminated when the Commission issued Rule 45 subpoenas in the A+ Financial litigation seeking the same information.

17. On September 6, 2013, the Commission denied Vantiv's and NPC's petition to quash in its entirety and ordered Vantiv and NPC to produce the documents and information requested in the CIDs no later than September 13, 2013. (PX 7).

18. Vantiv and NPC did not comply with the Commission's ruling. On September 11, 2013, I left a voicemail for Vantiv's and NPC's counsel to inquire about whether NPC and

C.F.R. § 4.10. Documents produced to the Commission in response to Rule 45 subpoenas are not subject to these restrictions.

Vantiv intended to comply with the Commission's ruling and produce the documents and information requested in the CIDs. Vantiv's and NPC's counsel did not return my call. Subsequently, on September 13, 2013, and September 16, 2013, I followed up with e-mails to Vantiv's and NPC's counsel again to inquire whether Vantiv and NPC would be complying with the CIDs as ordered by the Commission. (PXs 8 and 9). Counsel for Vantiv and NPC did not respond to my e-mail inquiries either.

19. On August 19, 2013, Vantiv and NPC served the FTC with written objections to the Rule 45 subpoenas and refused to produce the requested documents.

20. On August 22, 2013, the FTC filed motions to compel compliance with the Rule 45 subpoenas in the United States District Courts for the Southern District of Ohio (Vantiv's home district) and the Western District of Kentucky (NPC's home district). On September 4 and 5, 2013, the FTC filed motions to transfer the Rule 45 subpoena enforcement actions to this Court for resolution so that the motions to compel could be resolved in a single forum along with this CID enforcement proceeding. The FTC's motions to compel and its motions to transfer them to this Court are still pending. Vantiv and NPC filed their substantive responses to the Commission's enforcement petitions on September 16, and the Commission's substantive replies are due on October 3, 2013. Vantiv and NPC have until September 30 to file their oppositions to the FTC's motions to transfer venue and the Commission then has 14 days to file replies.

21. On September 12, Judge Graham of this Court issued an Order that provides, in relevant part, "As to the third parties' failure to produce documents in response to Rule 45 subpoenas served on them by the FTC, the Court previously ruled on this issue in its Sealed Order dated August 19, 2013 [D.E. 117]." A copy of the August 19 Order is attached as PX 10.

22. To date, Vantiv and NPC have not provided Commission staff with the documents or information requested in the Commission's CIDs, despite the Commission's September 6, 2013 ruling denying their petition to quash and ordering production by September 13, 2013. Moreover, Vantiv and NPC also have not produced any documents in response to the Rule 45 subpoenas issued in the A+ Financial litigation either.

23. Vantiv's and NPC's failure to comply with the CIDs and to produce the requested documents and information has burdened, delayed, and impeded the Commission's investigation.

I declare under penalty of perjury that the foregoing statement is true and correct.

Executed on September 23, 2013, at Washington, DC.



BIKRAM BANDY
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*Attorney for Petitioner
Federal Trade Commission*



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Vantiv, Inc.
8500 Governor's Hill Drive
Symmes Township, Ohio 45249

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

- ☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- ☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

AUG 19 2013

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Reeve Tyndall / Roberto Anguizola
Federal Trade Commission
600 Pennsylvania Ave., NW, Mailstop H-286
Washington, DC 20580

5. COMMISSION COUNSEL

Bikram Bandy (202-326-2978)
Federal Trade Commission
600 Pennsylvania Ave., NW, Mailstop H-286
Washington, DC 20580

DATE ISSUED

7/24/13

COMMISSIONER'S SIGNATURE

Alte D.

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:


To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: April 11, 2011

**CIVIL INVESTIGATIVE DEMAND
SCHEDULE FOR PRODUCTION OF DOCUMENTS AND
ANSWERS TO WRITTEN INTERROGATORIES**

I. DEFINITIONS

As used in this Civil Investigative Demand, the following definitions shall apply:

A. “**And**,” as well as “**or**,” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. “**Any**” shall be construed to include “**all**,” and “**all**” shall be construed to include the word “**any**.”

C. “**CID**” shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.

D. “**Company**” shall mean Vantiv, Inc., its wholly or partially owned subsidiaries (including Vantiv, LLC), unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

E. “**Document**” shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, label, drafts, transcripts of audio or video recordings, or file or folder label. “**Document**” shall also include all documents, materials, and information, including Electronically Stored Information, within the meaning of the Federal Rules of Civil Procedure.

F. “**Each**” shall be construed to include “**every**,” and “**every**” shall be construed to include “**each**.”

G. “**Electronically Stored Information**” or “**ESI**” shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by you into a reasonably usable form. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether

active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media.

H. **“FTC” or “Commission”** shall mean the Federal Trade Commission.

I. **“Identify” or “the identity of”** shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.

J. **“Referring to” or “relating to”** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

K. **“You” and “Your”** shall mean the person or entity to whom this CID is issued and includes the “Company”.

L. **“A+ Financial”** shall mean: (a) A+ Financial Center, LLC, Accelerated Financial Centers LLC, or Accelerated Accounting Services LLC; (b) the entity with the merchant identification number or chain code of 12565384; (c) any entity associated with Christopher L. Miano, Dana M. Miano, Heinz G. Tiede, or Robert Page between January 1, 2009 and October 31, 2012; or (d) any wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of any of the foregoing entities.

M. **“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 a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

N. **“First National Bank of Omaha”** shall mean First National Bank of Omaha, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

O. **“Outbound Telephone Call”** shall mean a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution, including a telephone call initiated to deliver a recorded message describing sales events, encourage visits to retail stores, or promote online sales.

P. **“NPC”** shall mean National Processing Company, its wholly or partially owned

subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

Q. **“Telemarketing”** shall mean a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.

R. **“TSYS”** shall mean TSYS Merchant Solutions, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Meet and Confer:** You must contact **Bikram Bandy at 202-326-2978** as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after receipt of this CID, or before the deadline for filing a petition to quash, whichever is first, in order to discuss compliance and to address and attempt to resolve all issues, including issues relating to protected status and the form and manner in which claims of protected status will be asserted, and the submission of ESI and other electronic productions as described in these Instructions. Pursuant to 16 C.F.R. § 2.7(k), you must make available personnel with the knowledge necessary for resolution of the issues relevant to compliance with this CID, including but not limited to personnel with knowledge about your information or records management systems, relevant materials such as organizational charts, and samples of material required to be produced. If any issues relate to ESI, you must make available a person familiar with your ESI systems and methods of retrieval.

C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from **April 1, 2008 until the date of full and complete compliance with this CID.**

D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege, work product protection, or statutory exemption, or any similar claim (*see* 16 C.F.R. § 2.7(a)(4)), the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.11(a)(1), submit, together with the claim, a detailed log of the items withheld. The information in the log shall be of sufficient detail to enable the Commission staff to assess the validity of the claim for each document, including attachments, without disclosing

the protected information. Submit the log in a searchable electronic format, and, for each document, including attachments, provide:

1. Document control number(s);
2. The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);
3. A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;
4. The date the material was created;
5. The date the material was sent to each recipient (if different from the date the material was created);
6. The email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent;
7. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors;
8. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material;
9. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material;
10. The factual basis supporting the claim that the material is protected; and
11. Any other pertinent information necessary to support the assertion of protected status by operation of law.

16 C.F.R. § 2.11(a)(1)(i)-(xi).

In the log, identify by an asterisk each attorney who is an author, recipient, or person copied on the material. The titles, business addresses, email addresses, and relevant affiliations of all authors, recipients, and persons copied on the material may be provided in a legend appended to the log. However, provide in the log the information required by Instruction D.6. 16 C.F.R. § 2.11(a)(2). The lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim of protected status must attest to the log. 16 C.F.R. § 2.11(a)(1).

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. Otherwise, produce all responsive information and material

without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

E. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

F. **Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of protected status or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.10(a)(1). Such petition shall not exceed 5,000 words as set forth in 16 C.F.R. § 2.10(a)(1) and must include the signed separate statement of counsel required by 16 C.F.R. § 2.10(a)(2). **The Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session with Commission staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); see also § 2.11(b).

G. **Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with **Bikram Bandy at 202-326-2978**. All such modifications must be agreed to in writing by the Bureau Director, or a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(l).

H. **Certification:** A responsible corporate officer shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

I. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

J. **Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to **Reeve Tyndall, Federal Trade Commission, 600 Pennsylvania Ave., NW, Mailstop H-286, Washington, DC 20580**. Because postal delivery to the Commission is subject to delay due to heightened security

precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by email or telephone to **Bikram Bandy** at **bbandy@ftc.gov** or **202-326-2978** at least five days prior to the return date.

K. Document Identification: Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

L. Production of Copies: Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible. A complete copy of each document should be submitted even though only a portion of the document is within the terms of the specification. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables, or other attachments and all other documents referred to in the document or attachments.

M. Electronic Submission of Documents: The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, You must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:

- (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents);
 - (c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, You should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of

email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;

- (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If You intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in Your computer systems or electronic storage media, or if Your computer systems contain or utilize such software, You must contact the Commission counsel named above to determine whether and in what manner You may use such software or services when producing materials in response to this Request.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with this instruction.

N. Sensitive Personally Identifiable Information: If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

O. Information Identification: Each specification and sub-specification of this CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is

responsive.

P. Submission of Documents in lieu of Interrogatory Answers: Previously existing documents that contain the information requested in any written Interrogatory may be submitted as an answer to the Interrogatory. In lieu of identifying documents as requested in any Interrogatory, you may, at your option, submit true copies of the documents responsive to the Interrogatory, provided that you clearly indicate the specific Interrogatory to which such documents are responsive.

Q. Certification of Records of Regularly Conducted Activity: Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

III. DOCUMENT REQUESTS

Please produce copies of the following documents:

- D- 1. All documents relating to, referencing, or constituting internal and external communications relating to A+ Financial, including electronic communications.
- D- 2. All documents relating to, referencing, or constituting communications with First National Bank of Omaha, or any other bank, relating to A+ Financial, including electronic communications.
- D- 3. All documents relating to, referencing, or constituting communications with NPC relating to A+ Financial, including electronic communications.
- D- 4. All documents relating to, referencing, or constituting communications with TSYS relating to A+ Financial, including electronic communications.
- D- 5. All underwriting files relating to A+ Financial.
- D- 6. All database information relating to A+ Financial, including information in the MAG, DDL, FSL, or HUNT Group databases that relate to A+ Financial.
- D- 7. All documents relating to, referencing, or constituting chargeback requests made by customers of A+ Financial.
- D- 8. All documents relating to, referencing, or constituting refund or return requests made by customers of A+ Financial.
- D- 9. To the extent not already requested, all documents relating to A+ Financial.
- D- 10. The Company's contract with First National Bank of Omaha.

D- 11. The Company's contract with TSYS.

D- 12. All documents relating to, referencing, or constituting guidance, advice, recommendations, warnings, best practices, or requirements issued by any bank regarding processing payments for merchants: (a) engaged in telemarketing; (b) engaged in the marketing or sale of debt relief products or services, including credit card interest rate reduction services; or (c) with high rates or incidences of chargebacks.

D- 13. All documents relating to, referencing, or constituting guidance, advice, recommendations, warnings, best practices, or requirements issued by any government agency regarding processing payments for merchants engaged in telemarketing or merchants with high rates or incidences of chargebacks, including: (a) the Office of the Comptroller of the Currency's Risk Management Guidance dated April 24, 2008; or (b) the Federal Deposit Insurance Corporation's November 7, 2008 Financial Institution Letter (FIL-127-2008) Guidance on Payment Processor Relationships.

D- 14. All documents relating to, referencing, or constituting the Company's policies, procedures, and practices relating to boarding, due diligence, underwriting, re-underwriting, and monitoring of merchants: (a) engaged in telemarketing through the use of outbound telephone calls; (b) engaged in the marketing of debt relief products or services, including credit card interest rate reduction services; or (c) whose chargeback rates exceed 1% for two or more consecutive months.

IV. INTERROGATORY

Please provide an answer to the request below, in writing and under oath.

I- 1. If, for any of the document requests set forth in Section III, there were documents that would have been responsive, but were destroyed, mislaid, transferred, deleted, altered, or over-written, please describe the documents, the date they were destroyed, mislaid, transferred, deleted, altered, or over-written, and the circumstances.

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Vantiv, Inc. and attached hereto.
3. The documents produced and attached hereto by Vantiv, Inc. are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Vantiv, Inc.; and
 - c) Were made by the regularly conducted activity as a regular practice of Vantiv, Inc..

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

National Processing Company
5100 Interchange Way
Louisville, Kentucky 40229

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

- ☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- ☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

AUG 19 2013

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Reeve Tyndall / Roberto Anguizola
Federal Trade Commission
600 Pennsylvania Ave., NW, Mailstop H-286
Washington, DC 20580

5. COMMISSION COUNSEL

Bikram Bandy (202-326-2978)
Federal Trade Commission
600 Pennsylvania Ave., NW, Mailstop H-286
Washington, DC 20580

DATE ISSUED

7/24/13

COMMISSIONER'S SIGNATURE

Collette D.

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:


To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: April 11, 2011

**CIVIL INVESTIGATIVE DEMAND
SCHEDULE FOR PRODUCTION OF DOCUMENTS AND
ANSWERS TO WRITTEN INTERROGATORIES**

I. DEFINITIONS

As used in this Civil Investigative Demand, the following definitions shall apply:

A. “**And**,” as well as “**or**,” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. “**Any**” shall be construed to include “**all**,” and “**all**” shall be construed to include the word “**any**.”

C. “**CID**” shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.

D. “**Company**” shall mean National Processing Company, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

E. “**Document**” shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, label, drafts, transcripts of audio or video recordings, or file or folder label. “**Document**” shall also include all documents, materials, and information, including Electronically Stored Information, within the meaning of the Federal Rules of Civil Procedure.

F. “**Each**” shall be construed to include “**every**,” and “**every**” shall be construed to include “**each**.”

G. “**Electronically Stored Information**” or “**ESI**” shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by you into a reasonably usable form. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether

active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media.

H. **"FTC"** or **"Commission"** shall mean the Federal Trade Commission.

I. **"Identify"** or **"the identity of"** shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.

J. **"Referring to"** or **"relating to"** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

K. **"You"** and **"Your"** shall mean the person or entity to whom this CID is issued and includes the "Company".

L. **"A+ Financial"** shall mean: (a) A+ Financial Center, LLC, Accelerated Financial Centers LLC, or Accelerated Accounting Services LLC; (b) the entity with the merchant identification number or chain code of 12565384; (c) any entity associated with Christopher L. Miano, Dana M. Miano, Heinz G. Tiede, or Robert Page between January 1, 2009 and October 31, 2012; or (d) any wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of any of the foregoing entities.

M. **"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 a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

N. **"First National Bank of Omaha"** shall mean First National Bank of Omaha, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

O. **"Outbound Telephone Call"** shall mean a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution, including a telephone call initiated to deliver a recorded message describing sales events, encourage visits to retail stores, or promote online sales.

P. **"Telemarketing"** shall mean a plan, program, or campaign which is conducted to induce

the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.

Q. “TSYS” shall mean TSYS Merchant Solutions, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

R. “Vantiv” shall mean Vantiv, Inc., its wholly or partially owned subsidiaries (including Vantiv, LLC), unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Meet and Confer:** You must contact **Bikram Bandy at 202-326-2978** as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after receipt of this CID, or before the deadline for filing a petition to quash, whichever is first, in order to discuss compliance and to address and attempt to resolve all issues, including issues relating to protected status and the form and manner in which claims of protected status will be asserted, and the submission of ESI and other electronic productions as described in these Instructions. Pursuant to 16 C.F.R. § 2.7(k), you must make available personnel with the knowledge necessary for resolution of the issues relevant to compliance with this CID, including but not limited to personnel with knowledge about your information or records management systems, relevant materials such as organizational charts, and samples of material required to be produced. If any issues relate to ESI, you must make available a person familiar with your ESI systems and methods of retrieval.

C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from **April 1, 2008 until the date of full and complete compliance with this CID.**

D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege, work product protection, or statutory exemption, or any similar claim (*see* 16 C.F.R. § 2.7(a)(4)), the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.11(a)(1), submit, together with the claim, a detailed log of the items withheld. The information in the log shall be of sufficient detail to enable the Commission staff to assess the validity of the claim for each document, including attachments, without disclosing

the protected information. Submit the log in a searchable electronic format, and, for each document, including attachments, provide:

1. Document control number(s);
2. The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);
3. A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;
4. The date the material was created;
5. The date the material was sent to each recipient (if different from the date the material was created);
6. The email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent;
7. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors;
8. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material;
9. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material;
10. The factual basis supporting the claim that the material is protected; and
11. Any other pertinent information necessary to support the assertion of protected status by operation of law.

16 C.F.R. § 2.11(a)(1)(i)-(xi).

In the log, identify by an asterisk each attorney who is an author, recipient, or person copied on the material. The titles, business addresses, email addresses, and relevant affiliations of all authors, recipients, and persons copied on the material may be provided in a legend appended to the log. However, provide in the log the information required by Instruction D.6. 16 C.F.R. § 2.11(a)(2). The lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim of protected status must attest to the log. 16 C.F.R. § 2.11(a)(1).

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. Otherwise, produce all responsive information and material

without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

E. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

F. **Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of protected status or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.10(a)(1). Such petition shall not exceed 5,000 words as set forth in 16 C.F.R. § 2.10(a)(1) and must include the signed separate statement of counsel required by 16 C.F.R. § 2.10(a)(2). **The Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session with Commission staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); see also § 2.11(b).

G. **Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with **Bikram Bandy at 202-326-2978**. All such modifications must be agreed to in writing by the Bureau Director, or a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(l).

H. **Certification:** A responsible corporate officer shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

I. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

J. **Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to **Reeve Tyndall, Federal Trade Commission, 600 Pennsylvania Ave., NW, Mailstop H-286, Washington, DC 20580**. Because postal delivery to the Commission is subject to delay due to heightened security

precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by email or telephone to **Bikram Bandy** at **bbandy@ftc.gov** or **202-326-2978** at least five days prior to the return date.

K. Document Identification: Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

L. Production of Copies: Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible. A complete copy of each document should be submitted even though only a portion of the document is within the terms of the specification. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables, or other attachments and all other documents referred to in the document or attachments.

M. Electronic Submission of Documents: The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, You must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:

- (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents);
 - (c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, You should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of

email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;

- (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If You intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in Your computer systems or electronic storage media, or if Your computer systems contain or utilize such software, You must contact the Commission counsel named above to determine whether and in what manner You may use such software or services when producing materials in response to this Request.
- (5) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.

- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with this instruction.

N. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

O. **Information Identification:** Each specification and sub-specification of this CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is

responsive.

P. Submission of Documents in lieu of Interrogatory Answers: Previously existing documents that contain the information requested in any written Interrogatory may be submitted as an answer to the Interrogatory. In lieu of identifying documents as requested in any Interrogatory, you may, at your option, submit true copies of the documents responsive to the Interrogatory, provided that you clearly indicate the specific Interrogatory to which such documents are responsive.

Q. Certification of Records of Regularly Conducted Activity: Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

III. DOCUMENT REQUESTS

Please produce copies of the following documents:

- D- 1. All documents relating to, referencing, or constituting internal and external communications relating to A+ Financial, including electronic communications.
- D- 2. All documents relating to, referencing, or constituting communications with First National Bank of Omaha, or any other bank, relating to A+ Financial, including electronic communications.
- D- 3. All documents relating to, referencing, or constituting communications with Vantiv relating to A+ Financial, including electronic communications.
- D- 4. All documents relating to, referencing, or constituting communications with TSYS relating to A+ Financial, including electronic communications.
- D- 5. All underwriting files relating to A+ Financial.
- D- 6. All database information relating to A+ Financial, including information in the MAG, DDL, FSL, or HUNT Group databases that relate to A+ Financial.
- D- 7. All documents relating to, referencing, or constituting chargeback requests made by customers of A+ Financial.
- D- 8. All documents relating to, referencing, or constituting refund or return requests made by customers of A+ Financial.
- D- 9. To the extent not already requested, all documents relating to A+ Financial.
- D- 10. The Company's contract with First National Bank of Omaha.

D- 11. The Company's contract with TSYS.

D- 12. All documents relating to, referencing, or constituting guidance, advice, recommendations, warnings, best practices, or requirements issued by any bank, including First National Bank of Omaha, regarding processing payments for merchants: (a) engaged in telemarketing; (b) engaged in the marketing or sale of debt relief products or services, including credit card interest rate reduction services; or (c) with high rates or incidences of chargebacks.

D- 13. All documents relating to, referencing, or constituting guidance, advice, recommendations, warnings, best practices, or requirements issued by any government agency regarding processing payments for merchants engaged in telemarketing or merchants with high rates or incidences of chargebacks, including: (a) the Office of the Comptroller of the Currency's Risk Management Guidance dated April 24, 2008; or (b) the Federal Deposit Insurance Corporation's November 7, 2008 Financial Institution Letter (FIL-127-2008) Guidance on Payment Processor Relationships.

D- 14. All documents relating to, referencing, or constituting the Company's policies, procedures, and practices relating to boarding, due diligence, underwriting, re-underwriting, and monitoring of merchants: (a) engaged in telemarketing through the use of outbound telephone calls; (b) engaged in the marketing of debt relief products or services, including credit card interest rate reduction services; or (c) whose chargeback rates exceed 1% for two or more consecutive months.

IV. INTERROGATORY

Please provide an answer to the request below, in writing and under oath.

I- 1. If, for any of the document requests set forth in Section III, there were documents that would have been responsive, but were destroyed, mislaid, transferred, deleted, altered, or over-written, please describe the documents, the date they were destroyed, mislaid, transferred, deleted, altered, or over-written, and the circumstances.

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by National Processing Company and attached hereto.
3. The documents produced and attached hereto by National Processing Company are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of National Processing Company; and
 - c) Were made by the regularly conducted activity as a regular practice of National Processing Company.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2013.

Signature



UNITED STATES OF AMERICA
Federal Trade Commission
Washington, D.C. 20580

Bikram Bandy
Bureau Of Consumer Protection
Phone: (202) 326-2978
Email: bbandy@ftc.gov

August 13, 2013

VIA EMAIL

JEFFREY D. KNOWLES (JDKNOWLES@VENABLE.COM)
LEONARD L. GORDON (LLGORDON@VENABLE.COM)
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RE: CIVIL INVESTIGATIVE DEMAND AND RULE 45 SUBPOENAS ISSUED TO NATIONAL PROCESSING COMPANY AND VANTIV

Dear Counsel:

We are writing in reference to the civil investigative demands (CIDs) and Rule 45 subpoenas served on your clients, National Processing Company and Vantiv, Inc., which each have a response date of August 19, 2013. During our meet and confer teleconferences last week, you requested specific modifications to the specifications/requests set forth in the CIDs and subpoenas. Set forth below are the modifications you requested and our proposed response.

1. You requested that the responses to the CIDs and subpoenas be limited to documents generated before October 23, 2012 – the date the A+ Financial litigation was filed. You indicated that responsive documents generated after that date are mostly attorney-client communications that are protected from disclosure and would result in more time and effort in generating the privilege log. In response to this concern, we are willing to modify the CID and the subpoena to not require NPC and Vantiv to list responsive privileged documents generated after November 16, 2012 (the date the reserve account was turned over) on a privilege log. We will, however, still require you to produce all responsive, non-privileged documents up to the date of compliance with the CID and subpoena. We will also still require you to produce a privilege log listing all responsive documents you withhold on the basis of privilege that were generated between April 1, 2008 and November 16, 2012.
2. You requested that, for requests D-12, D-13, and D-14 in the Vantiv CID and subpoena, that Vantiv's search not include documents in the possession of two of its wholly-owned

subsidiaries.¹ During our call last week, you indicated that one of the subsidiaries was Litle & Company. You informed us that you would get us the name of the other subsidiary, but we have not received that information yet. Although we reserve the right to modify our position once you provide us the name of the other subsidiary, we are willing to exclude, for now, documents in the possession of Litle or the other non-NPC Vantiv subsidiary in Vantiv's search for information responsive to D-12, D-13, and D-14. We will, however, require Vantiv to produce all documents responsive to D-12, D-13, or D-14 that are in Vantiv's possession, including any responsive communications between Vantiv and either of the two subsidiaries at issue. In addition, we reserve the right to require Vantiv to search and produce responsive documents in the possession of the two subsidiaries at a later time if we see indications that those subsidiaries have responsive information.

3. For request D-6 in the Vantiv and NPC CIDs and subpoenas, you requested that, instead of producing database data itself, you be permitted to produce reports generated from each database that relate to A+ Financial. We are willing to agree to this request, provided that you provide us with information indicating how each report was generated, the inputs that were used to generate the report, and a description of all fields contained in the report. In addition, we will require you to identify any data that is available in the databases but not included in the reports and to provide us with information or schematics showing the structure of each database together with descriptions of all available fields contained in each database.

Please let us know whether our proposals are acceptable to your clients. If so, we will promptly formalize the modifications set forth above in a letter signed by our Associate Director.

Finally, I have enclosed as a courtesy a copy of the proposed protective order that we have circulated to the parties in the A+ Financial litigation for their review and consent. The attached protective order is based on the standard protective order set forth in the Commission's rules (16 C.F.R. § 3.31, Appendix A). We will be filing a motion with the Court no later than Friday, August 16, seeking the Court's approval of the attached protective order. If your clients have any comments regarding the proposed protective order, we are willing to consider them before we submit the proposed protective order to the Court for its approval, so long as you provide your comments no later than close of business on Thursday, August 15.

If you have any questions or wish to discuss further anything set forth in this letter, please do not hesitate to contact me or Will Maxson (202-326-2635). Thank you.

Sincerely,



Bikram Bandy

¹ It is our view that Vantiv has custody or control over documents in the possession of its subsidiaries.

cc: J. Douglas Baldridge (via e-mail)
William Maxson (via e-mail)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-CV-14373-DLG

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

A+ FINANCIAL CENTER, LLC, et al.,

Defendants.

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

For the purpose of protecting the interests of the parties, the receiver, and third parties in this action against improper use and disclosure of confidential information submitted or produced in connection with this matter, IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order: (a) “Confidential Material” shall refer to any document or portion thereof that contains privileged information, competitively sensitive information, or sensitive personal information; (b) “Sensitive Personal Information” shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records; (c) “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a Party or a third party; (d) “Commission” shall refer to

the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding; (e) “Receiver” shall refer to the court-appointed receiver in this action or any of his employees, agents, attorneys, and all other persons acting on his behalf, excluding persons retained as consultants or experts for purposes of this proceeding; and (f) “Party” or “Parties” shall refer to the Plaintiff, Defendants, and/or the Receiver in this action.

2. Any document or portion thereof submitted by a respondent or a third party during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any Confidential Materials derived from a document subject to this Order, shall be treated as Confidential Material for purposes of this Order. The identity of a third party submitting such Confidential Material shall also be treated as Confidential Material for the purposes of this Order where the submitter has requested such confidential treatment; however, the identity of the submitter shall cease to be treated as Confidential Material if the submitter is named as a defendant in an action brought by the Commission.

3. The Parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as Confidential Material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The Parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes Confidential Material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL—SDFL Docket No. 12-CV-14373” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be Confidential Material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL—SDFL Docket No. 12-CV-14373” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

7. Confidential Material shall be disclosed only to: (a) the Court and its personnel; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) the Parties, the Parties’ attorneys, and their respective employees; (d) anyone retained by the Parties to assist in this proceeding, including consultants or experts, provided they have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of Confidential Material to any person described in Paragraph 7 of this Order shall be only for the purposes of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose Confidential Material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any Confidential Material is contained in any pleading, motion, exhibit or other paper filed or to be filed, such papers shall be filed under seal. To the extent that such material was originally submitted by a third party, the Party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential Material contained in the papers shall continue to have confidential treatment until further order of the Court, provided, however, that such papers may be furnished to persons or entities who may receive Confidential Material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party may file on the public record a duplicate copy of the paper that does not reveal Confidential Material. Further, if the protection for any Confidential Material expires, a Party may file on the public record a duplicate copy which contains the formerly protected material.

10. If counsel plans to introduce into evidence any document or transcript containing Confidential Material produced by another Party or by a third party, they shall provide advance notice to the other Party or third party for purposes of allowing that producing party to seek an order that the document or transcript be granted in camera treatment. If the producing party wishes in camera treatment for the document or transcript, the producing party shall file an appropriate motion with the Court within 5 days after it receives such notice. Except where such

an order is granted, all documents and transcripts shall be part of the public record. Where in camera treatment is granted, a duplicate copy of such document or transcript with the Confidential Material deleted therefrom may be placed on the public record.

11. If any Party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of Confidential Material submitted by another Party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of Confidential Material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Court or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of Confidential Material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing Confidential Material. At the conclusion of this proceeding, including the exhaustion of judicial review, the Parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's

obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Material, shall, without written permission of the submitter or further order of the Court, continue to be binding after the conclusion of this proceeding.

14. The recipient of any documents or information designated by a Party or third party as Confidential Material under this Order may challenge such designation. Such challenge shall be in writing directed to the producing party and shall set forth the basis for the recipient's claim that the challenged information or material is not privileged information, competitively sensitive information, or sensitive personal information. Within 10 days of the receipt of the written challenge, the producing party shall file a motion for protective order with the Court setting forth its basis for designating the information or material as Confidential Material. The challenged information or material shall continue to be treated as Confidential Material during the pendency of the motion for protective order and, if the motion is granted, shall remain as Confidential Material. If the Court denies the producing party's motion for protective order or if the producing party fails to file a motion for protective order within the 10-day period, the challenged information or material shall lose its confidential designation and shall no longer be treated as Confidential Material under this Order.

DONE AND ORDERED, this __ day of _____, 2013

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

FEDERAL TRADE COMMISSION
2013 AUG 15 PM 4:56
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
DOCUMENT PROCESSING SECTION

In re NATIONAL PROCESSING COMPANY, et al

PETITION TO QUASH
CIVIL INVESTIGATIVE DEMAND DATED JULY 24, 2013

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Attorneys for National Processing Company and Vantiv, Inc.

Dated: August 15, 2013

I. INTRODUCTION

Pursuant to 15 U.S.C. §57b-1(f) and 16 C.F.R. §2.10, National Processing Company (“NPC”) and Vantiv, Inc. (“Vantiv”) (collectively the “Vantiv Parties”) hereby petition to quash the Civil Investigative Demands issued by the Federal Trade Commission (the “Commission” or “FTC”) on July 24, 2013 (“The CIDs”). As described more fully below, the FTC’s authority to use pre-adjudication compulsory process under Part II of the Commission’s Rules of Practice terminated when FTC Staff issued Rule 45 subpoenas in a pending litigation seeking the same information. Simultaneously pursuing both The CIDs and Rule 45 subpoenas is outside the agency’s authority. Thus, the Commission should quash The CIDs or direct FTC Staff to withdraw the Rule 45 subpoenas.

II. FACTUAL AND PROCEDURE BACKGROUND

From December 2009 until October 2012, NPC provided credit card processing services to A+ Financial Center, LLC f/k/a Accelerated Accounting Services, LLC (“A+ Financial”) pursuant to an arms’ length business relationship. A+ Financial was one of approximately 175,000 merchants for which NPC provides payment processing services. NPC is a subsidiary of Vantiv, which is a publicly traded company (NYSE: VNTV). Vantiv is the nation’s third largest payment processor. Declaration of Leonard L. Gordon (“Gordon Declaration”) ¶4, attached as Exhibit 1.

On October 23, 2012, the FTC sued A+ Financial and its principals, Christopher Miano and Dana Miano alleging that they made illegal “robocalls” and illegally marketed interest rate reduction services in violation of the FTC Act and the Telemarketing Sales Rule (“TSR”) (“A+ Litigation”). In January 2013, the FTC reached a settlement with all of the defendants in the A+ Litigation. Gordon Declaration ¶5.

After the litigation began, NPC caused all reserves that had been established regarding the A+ Financial account to be turned over to the court-appointed receiver ("Receiver"). NPC also produced to the Receiver and to the FTC, certain documents regarding NPC's relationship with A+ Financial. On February 5, 2013, NPC and Vantiv voluntarily produced three employees for depositions where they were questioned by the Receiver and the FTC regarding the A+ Financial account. Gordon Declaration ¶6.

On February 27, 2013, FTC Staff informed counsel for Vantiv and NPC that they were recommending that the Commission authorize Staff to file an amended complaint naming Vantiv and NPC as additional defendants in the A+ Litigation based on the Vantiv Parties' allegedly assisting and facilitating A+ Financial's TSR violations by providing payment processing services to A+ Financial. Ultimately, Judge Graham (who presides over the A+ Financial Litigation) gave the FTC a deadline of July 5, 2013 to indicate whether the FTC would so amend the complaint. Gordon Declaration ¶7.

Subsequent to being informed of the FTC Staff's recommendation to add the Vantiv Parties to the A+ Litigation, executives of those companies travelled to Washington, DC numerous times to meet with two levels of management in the FTC's Bureau of Consumer Protection and with each of the individual Commissioners. In those meetings, and in papers prepared for those meetings, the Vantiv Parties explained their side of the story. In short, the Vantiv Parties explained that NPC's limited arms' length involvement with A+ Financial did not provide an adequate factual or legal basis to hold the Vantiv Parties responsible for all of the consumer injury allegedly caused by A+ Financial. The Vantiv Parties also explained that holding a payment processor responsible for all of the harm that any of the thousands of merchants in a portfolio allegedly caused could have devastating effects on the payment

processing industry as a whole and ultimately harm consumers. The Vantiv Parties expended considerable money and time in this effort. Gordon Declaration ¶8.

At the end of those discussions, FTC Staff apparently decided to withdraw their complaint recommendation to the Commission. On July 3, 2013, FTC Staff informed counsel for the Vantiv Parties that the FTC would not be seeking to add those entities as defendants in the A+ Litigation, and the FTC so informed the Court on July 5, 2013. During the July 3, 2013 call, FTC Staff informed counsel that it was Staff's intention to request that the Commission issue CIDs to the Vantiv Parties seeking additional information regarding the A+ Financial account. On July 24, 2013, the Commission issued The CIDs, which Staff served on July 26, 2013. At no time prior to this did the FTC seek to obtain documents or information from Vantiv or NPC through compulsory process either in the A+ Litigation or through the FTC's Part II procedures. Gordon Declaration ¶9.

On July 24, 2013, Judge Graham conducted a hearing regarding the FTC's settlement with A+ Financial and the Mianos. The Judge did not approve the settlement at that hearing. At the hearing, the Receiver requested that the FTC share with him any materials it might obtain from its investigation of parties that may have assisted and facilitated A+ Financial's TSR violations. FTC Staff correctly informed the Court that the FTC could not share with the Receiver materials obtained in response to a CID. Gordon Declaration ¶10.

On August 2, 2013, the FTC Staff moved the court to lift the stay on discovery in the A+ Litigation to permit Staff to serve Rule 45 subpoenas. The Staff's motion makes clear that one of the purposes in so doing was to end run the confidentiality restrictions on information the FTC obtains through CIDs. FTC Motion to Lift Stay (Exhibit 2) at p. 2. The court granted the FTC's motion on August 6, 2013, and the FTC served Rule 45 subpoenas on the Vantiv Parties that

same day. The Rule 45 subpoenas seek the exact same information as The CIDs. Gordon Declaration ¶11.

During calls with FTC Staff on August 5 and August 7, counsel for the Vantiv Parties raised the issue of the impropriety of seeking information both through Rule 45 subpoenas and The CIDs. FTC Staff and counsel were unable to resolve their differences on this issue. Gordon Declaration ¶3.

III. ARGUMENT

A. The Commission Cannot Pursue Discovery Simultaneously in Federal Court and Through Part II Procedures.

The FTC Act permits the Staff to use investigative compulsory processes (such as CIDs) only until the Commission institutes an adjudicative proceeding. Here, the FTC issued the CIDs after it had informed the Court that it would not be amending the complaint in the A+ Litigation and was presenting for Court approval the Final Order in that case. FTC Staff, however, now seems to have changed its mind on that subject and has sought to revive the A+ Litigation by having the stay lifted and pursuing discovery in that case with the clear goal of possibly amending the complaint in that litigation. Given that conduct, The CIDs no longer are valid and should be quashed. Alternatively, the FTC can withdraw the subpoenas and stop pursuing discovery in the A+ Litigation. The FTC, however, cannot do both.

The FTC's authority to issue CIDs arises from Section 20 of the FTC Act, which provides that investigative compulsory process may only be used "before the institution of any proceedings[.]" 15 U.S.C. §57b-1(c)(2009). Section 20 expressly excludes the use of CIDs from "any proceeding under section 45b of this title [section 13b of the FTC Act]... or any adjudicative proceeding under any other provision of law." 15 U.S.C. § 57b-1(j)(2009). The A+ Litigation was brought under section 13b of the FTC Act, and FTC Staff has now re-opened that

litigation and is again exploring adding the Vantiv Parties as defendants in that pending adjudicative proceeding. Moreover, FTC Staff has indicated that it is their position that any amendment of the complaint in the A+ Litigation adding the Vantiv Parties for assisting and facilitating A+ Financial's TSR violations would "relate back" to the original complaint under Federal Rule of Civil Procedure 15(c). Gordon Declaration ¶12. In addition, the fact that Staff seeks the same information through both the CIDs and the Rule 45 subpoenas confirms that The CIDs are being used in an adjudicative proceeding brought under Section 13b of the FTC Act. Thus, the CIDs are improper.

Courts have recognized that there is a "shift" from investigative rules to adjudicative rules once a complaint issues. *Genuine Parts Co. v. F.T.C.*, 445 F.2d 1382, 1388 (5th Cir. 1971). *See also United States v. Associated Merchandising Corp.*, 261 F. Supp. 553, 558 (D.C.N.Y. 1966) ("[I]t is the adjudicative rules, not the investigative ones, which are to govern once a complaint has issued."); *Hannah v. Larche*, 363 U.S. 420, 446 (1960) (stating that the Commission's "rules draw a clear distinction between adjudicative proceedings and investigative proceedings"); *Standard Oil Co v. F.T.C.*, 475 F. Supp. 1261, 1268 (N.D. Ind. 1979) (same); *General Motors Corp. v. F.T.C.*, No. C77-706, 1977 WL 1552 (N.D. Ohio Nov. 4, 1977) (same).¹ Here, Staff now seeks to use the CID in an adjudicative proceeding with the goal of adding the Vantiv Parties as defendants in that adjudicative proceeding.

Accordingly, because the Commission staff choose to re-open the A+ Litigation and seek the same information covered by The CIDs in Rule 45 subpoenas, the FTC's authority to issue or

¹ While these cases arise in the context of Part III adjudicative proceedings, the principle is the same where the Commission has brought a civil rather than an administrative complaint. *See F.T.C. v. Turner*, 609 F.2d 743, 745 n.3 (5th Cir. 1980) ("Although the Federal Rules of Civil Procedure do not bind administrative agencies in conducting purely administrative investigations, administrative agencies are unquestionably bound by the rules when they are parties in civil actions." (internal citation omitted)).

enforce a CID – an investigative tool that may not be used in “any adjudicative proceeding under any . . . provision of law[.]” 15 U.S.C. § 57b-1(j) – terminated. Rather, the Commission must seek discovery pursuant to the Federal Rules of Civil Procedure or withdraw the Rule 45 subpoenas.

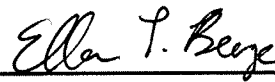
B. Staff’s Effort To End-Run The Confidentiality Provisions Governing CIDs Requires that the CID Be Quashed Or the Rule 45 Subpoenas Be Withdrawn.

The current investigation of the Vantiv Parties remains a confidential non-public matter. Section 20 of the FTC Act and the Commission’s Rules requires that materials produced in response to a CID be kept confidential and not be shared with third parties. 15 U.S.C. §57b-2; 16 C.F.R. 4.10. FTC Staff has admitted in seeking leave from the Court to serve Rule 45 subpoenas that one reason for doing so was to share information obtained from the Vantiv Parties through the CIDs with the Receiver. The Vantiv Parties question the propriety of Staff end-running the statutory confidentiality prohibitions governing CIDs. Because Staff seeks the same information under both The CIDs and Rule 45 subpoenas, that information is subject to conflicting confidentiality rules. Information provided in response to a CID cannot be shared with the Receiver. 15 U.S.C. §57b-2(b)(3)(C). Information provided in response to a Rule 45 subpoena could be. This conflict further demonstrates the improper nature of seeking information simultaneously through both Rule 45 subpoenas and The CIDs. Thus, the Commission should either direct Staff to withdraw the subpoenas or quash The CIDs.

IV CONCLUSION

Because staff cannot pursue discovery simultaneously through both the CIDs and Rule 45 subpoenas, the Commission should either quash the CIDs or direct staff to withdraw the subpoenas.

Respectfully submitted,



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EXHIBIT 1

DECLARATION AND RULE 2.10(a)(2) STATEMENT OF LEONARD L. GORDON

I, Leonard L. Gordon, hereby declare as follows:

1. I am partner in the law firm of Venable LLP and am one of the lawyers representing National Processing Company and Vantiv Inc. (collectively "Vantiv Parties") in connection with the investigation by the Federal Trade Commission ("FTC" or "Commission") regarding The Vantiv Parties' involvement with A+ Financial Center, LLC f/k/a Accelerated Accounting Services, LLC ("A+ Financial") and its principals, Christopher Miano and Dana Miano.

2. I make this statement and declaration upon personal knowledge in support of the Petition to Quash filed by The Vantiv Parties of the Civil Investigative Demands issued by the FTC on July 24, 2013 ("The CIDs").

3. During calls with FTC Staff on August 5 and August 7, I and other lawyers at Venable LLP raised the issue of the impropriety of seeking information both through Rule 45 subpoenas and The CIDs. FTC Staff and counsel for the Vantiv Parties were unable to resolve their differences on this issue.

4. From December 2009 until October 2012, NPC provided credit card processing services to A+ Financial Center, LLC f/k/a Accelerated Accounting Services, LLC ("A+ Financial") pursuant to an arms' length business relationship. A+ Financial was one of approximately 175,000 merchants for which NPC provides payment processing services. NPC is a subsidiary of Vantiv, which is a publicly traded company (NYSE: VNTV). Vantiv is the nation's third largest payment processor.

5. On October 23, 2012, the FTC sued A+ Financial and its principals, Christopher Miano and Dana Miano alleging that they made illegal "robocalls" and illegally marketed interest rate reduction services in violation of the FTC Act and the Telemarketing Sales Rule

("TSR") ("A+ Litigation"). In January 2013, the FTC reached a settlement with all of the defendants in the A+ Litigation.

6. After the litigation began, NPC caused all reserves that had been established regarding the A+ Financial account to be turned over to the court-appointed receiver ("Receiver"). NPC also produced to the Receiver and to the FTC, certain documents regarding NPC's relationship with A+ Financial. On February 5, 2013, NPC and Vantiv voluntarily produced three employees for depositions where they were questioned by the Receiver and the FTC regarding the A+ Financial account.

7. On February 27, 2013, FTC Staff informed me and other lawyers at Venable LLP that FTC Staff was recommending that the Commission authorize Staff to file an amended complaint naming Vantiv and NPC as additional defendants in the A+ Litigation based on the Vantiv Parties' allegedly assisting and facilitating A+ Financial's TSR violations by providing payment processing services to A+ Financial. Ultimately, Judge Graham (who presides over the A+ Financial Litigation) gave the FTC a deadline of July 5, 2013 to indicate whether the FTC would so amend the complaint.

8. Subsequent to being informed of the FTC Staff's recommendation to add the Vantiv Parties to the A+ Litigation, executives of those companies travelled to Washington, DC numerous times to meet with two levels of management in the FTC's Bureau of Consumer Protection and with each of the individual Commissioners. In those meetings, and in papers prepared for those meetings, the Vantiv Parties explained their side of the story. In short, the Vantiv Parties explained that NPC's limited arms' length involvement with A+ Financial did not provide an adequate factual or legal basis to hold the Vantiv Parties responsible for all of the consumer injury allegedly caused by A+ Financial. The Vantiv Parties also explained that

holding a payment processor responsible for all of the harm that any of the thousands of merchants in a portfolio allegedly caused could have devastating effects on the payment processing industry as a whole and ultimately harm consumers. The Vantiv Parties expended considerable money and time in this effort.

9. On July 3, 2013, FTC Staff informed me that the FTC would not be seeking to add the Vantiv Parties as defendants in the A+ Litigation, and the FTC so informed the Court on July 5, 2013. During the July 3, 2013 call, FTC Staff informed me that it was Staff's intention to request that the Commission issue CIDs to the Vantiv Parties seeking additional information regarding the A+ Financial account. On July 24, 2013, the Commission issued The CIDs, which Staff served on July 26, 2013. At no time prior to this did the FTC seek to obtain documents or information from Vantiv or NPC through compulsory process either in the A+ Litigation or through the FTC's Part II procedures.

10. On July 24, 2013, Judge Graham conducted a hearing regarding the FTC's settlement with A+ Financial and the Mianos. The Judge did not approve the settlement at that hearing. At the hearing, the Receiver requested that the FTC share with him any materials it might obtain from its investigation of parties that may have assisted and facilitated A+ Financial's TSR violations. FTC Staff correctly informed the Court that the FTC could not share materials obtained in response to a CID.

11. On August 2, 2013, the FTC Staff moved the court to lift the stay on discovery in the A+ Litigation to permit Staff to serve Rule 45 subpoenas. The Staff's motion makes clear that one of the purposes in so doing was to end run the confidentiality restrictions on information the FTC obtains through CIDs. The court granted the FTC's motion on August 6, 2013, and the

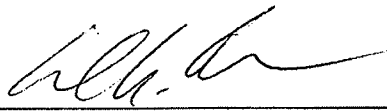
FTC served Rule 45 subpoenas on the Vantiv Parties that same day. The Rule 45 subpoenas seek the exact same information as The CIDs.

12. In mid-March 2013, I had several conversations with FTC Staff concerning a possible tolling agreement. During one of those conversations, Bikram Bandy of the FTC stated that he did not believe a tolling agreement was actually necessary as any amendment of the FTC's Complaint to add The Vantiv Parties as defendants in the A+ Litigation would "relate back" to the original complaint under Federal Rule of Civil Procedure 15(c).

I HEREBY DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

August 15, 2013

DATE



LEONARD L. GORDON

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-CV-14373-DLG

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

A+ FINANCIAL CENTER, LLC, et al.,

Defendants.

**PLAINTIFF'S UNOPPOSED MOTION FOR PARTIAL LIFTING OF
STAY TO AUTHORIZE SERVICE OF RULE 45 SUBPOENAS**

Plaintiff, Federal Trade Commission ("FTC"), respectfully requests that this Court partially lift the stay currently in place in this action for the limited purpose of allowing the parties and the Receiver to serve Rule 45 subpoenas on non-parties seeking any information relevant to this action, including information relating to potential claims that could be asserted against third parties who may have assisted and facilitated the unlawful conduct alleged in the Complaint. As explained below, good cause exists for granting the requested relief.

First, allowing the parties to serve Rule 45 subpoenas will give the FTC and the Receiver the ability to collect information necessary to determine whether there are potential claims that can be asserted against third parties relating to the conduct alleged in the Complaint – claims that, if successfully asserted, would lead to additional funds for the Receivership estate that can be used to provide meaningful compensation to consumers who lost money as a result of Defendants' unlawful acts and practices. Given that the Court indicated at the July 24, 2013, hearing its strong preference that a final resolution of this action include meaningful redress to

consumer victims and the fact that there are insufficient funds in the Receivership estate to provide such redress, it is critical that the parties (particularly the FTC and the Receiver) be given the ability to obtain information via subpoena so that they can ascertain whether there are any viable claims against third parties that could ultimately lead to additional funds sufficient to provide meaningful redress to consumer victims.

In addition, authorizing the parties to serve Rule 45 subpoenas will also be efficient and avoid unnecessary duplication of effort because the FTC will be able to share information received via subpoena with the Receiver. As explained at the July 24, 2013, hearing, FTC regulations generally prohibit the FTC from sharing information obtained under its own independent civil subpoena authority. The FTC, however, generally is not prohibited from sharing information that it obtains via a Rule 45 subpoena issued in an active litigation. For this reason, authorizing the parties to issue Rule 45 subpoenas will allow the Receiver and the FTC to share information obtained from third parties, thereby avoiding duplication of effort and undue burden on subpoena recipients in responding to multiple requests for similar information.

Finally, the FTC is only requesting a lifting of the stay for the purposes of allowing the parties to serve subpoenas on third parties (as well as the filing of any motions relating to any subpoenas). The FTC is not requesting that the Court authorize the parties to serve discovery requests on each other or that the existing stay be lifted for any other purpose. Given the pending Joint Motion for Entry of Stipulated Final Judgment and Order for Permanent Injunction [Doc. No. 99], the opening of full discovery is neither prudent nor necessary, particularly given the Defendants' concern raised at the July 24, 2013, hearing of incurring additional attorneys' fees and expenses with a settlement agreement pending before the Court.

Pursuant to Local Rule 7.1(a)(3)(A), the undersigned counsel hereby certifies that he has

conferred with the Receiver and Defendants' counsel, and neither object to the relief requested.

WHEREFORE, for the above stated reasons, the FTC respectfully requests that this Court enter an order: (a) partially lifting the stay in this matter to allow the parties to serve subpoenas on non-parties pursuant to Rule 45 of the Federal Rules of Civil Procedure; (b) keeping all other aspects of the existing stay in place, including prohibiting the parties from serving discovery requests upon each other without leave of Court; and (c) otherwise maintaining all provisions and requirements set forth in the Court's Preliminary Injunction Order [D.E. 23], as modified [D.E. 22, 25, 45, 68].

Dated: August 1, 2013

Respectfully submitted,

/s/ William T. Maxson

Bikram Bandy

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Special Florida Bar No. A5501814

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Federal Trade Commission

600 Pennsylvania Ave., NW, Mail Stop H-286

Washington, DC 20580

Fax: (202) 326-3395

Attorneys for Plaintiff

FEDERAL TRADE COMMISSION

CERTIFICATE OF SERVICE

I certify that the foregoing PLAINTIFF'S UNOPPOSED MOTION FOR PARTIAL LIFTING OF STAY TO AUTHORIZE SERVICE OF RULE 45 SUBPOENAS was served on all counsel of record via CM/ECF on August 1, 2013.

/s/ William T. Maxson

William T. Maxson



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August 15, 2013
Via email

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Bikram Bandy, Esq.
William Maxson, Esq.
Federal Trade Commission
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Re: FTC v. A+ Financial Centers, LLC

Dear Bikram and Will:

I am responding to your letter of August 15, 2013, regarding the Civil Investigative Demands (CIDs) and Rule 45 subpoenas (Subpoenas) issued to National Processing Company ("NPC") and Vantiv, Inc. ("Vantiv").

Thank you for your response concerning the modifications that we discussed to the CIDs and providing a proposed Protective Order. Your letter, however, fails to deal with the larger issue that under 15 U.S.C. §57b-1(j) the FTC cannot use a CID in an adjudicative proceeding, which is precisely what the FTC now is trying to do. As stated previously, the FTC can pursue discovery in an adjudicative proceeding or it can use its Part II investigatory tools, it cannot do both at the same time. We have filed a Petition to Quash based on this issue.

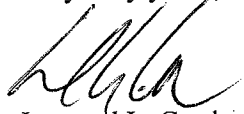
Regarding the proposed Protective Order, the problem discussed in the preceding paragraph is not remedied by the proposed Protective Order. Under 15 U.S.C. §57b-2(b)(3)(C), the FTC cannot share any materials that Vantiv or NPC would produce in response to the CIDs. While paragraph 2 of the Protective Order states that materials entitled to confidential treatment under the FTC Act or applicable rules or regulations shall be treated as Confidential Materials under the proposed Protective Order, paragraph 7 of the proposed Protective Order would allow the sharing of Confidential Information with the Receiver or other parties.

VENABLE[®]_{LLP}

Frank Scruggs, Esq.
William Maxson, Esq.
August 15, 2013
Page 2

The modifications that you propose seem workable. Once the FTC determines which discovery device it wishes to use and we move forward with production, we will apprise you of any issues regarding the modifications if they arise.

Very truly yours,



Leonard L. Gordon

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

In the Matter of

**JULY 24, 2013 CIVIL INVESTIGATIVE DEMANDS
ISSUED TO NATIONAL PROCESSING CO. AND
VANTIV, INC.**

)
)
) **File No. 1323105**
)
) **September 6, 2013**
)
)

**OPINION AND ORDER DENYING PETITION TO QUASH
CIVIL INVESTIGATIVE DEMANDS**

By WRIGHT, Commissioner:

On August 15, 2013, Petitioners, National Processing Co. (“NPC”) and Vantiv, Inc. (collectively the “Vantiv Entities”) filed a timely Petition to Quash Commission Civil Investigative Demands (“CIDs”) dated July 24, 2013. For the reasons set forth below, the Commission denies the Petition to Quash (“Petition”) and orders the Vantiv Entities to comply with the CIDs on or before September 13, 2013.

I. BACKGROUND

The Commission’s investigation of the Vantiv Entities concerns activities that are distinct from, but related to, the acts and practices that led to the Commission enforcement action, *FTC v. A+ Financial Center, LLC, et al.*, No. 12-CV-14373-DLG (S.D. Fla. filed Oct. 23, 2012), filed under the authority of 15 U.S.C. §53(b). The *A+ Financial* complaint alleges that the defendants violated Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §45(a), and the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, by deceptively marketing credit card interest rate reduction services to consumers struggling with high credit card debt, illegally collecting an advance fee for their purported services, and illegally using prerecorded calls to contact consumers. Neither NPC nor Vantiv is a defendant in the *A+ Financial* enforcement action. Nonetheless, from December 2009 through October 2012, NPC (a credit card processor) processed the majority of the allegedly illegal advance fees that

consumers paid to the *A+ Financial* defendants. Vantiv acquired NPC as a wholly-owned subsidiary in November 2010.

On July 24, 2013, the Commission issued a separate CID to each of the Vantiv Entities as part of its investigation into the Vantiv Entities' role in, and knowledge of, the illegal acts and practices of the *A+ Financial* defendants. The documents sought in these CIDs (the "July 24, 2013 CIDs") will help the Commission evaluate whether the Vantiv Entities violated the FTC Act or the TSR. Each CID contains 14 identical document production specifications and a single interrogatory requesting an explanation for the spoliation, if any, of responsive documents.

On August 6, 2013, after it issued the CIDs, the Commission served the Vantiv Entities with subpoenas under Fed. R. Civ. P. 45. The subpoenas seek the same documents as the CIDs. Commission counsel issued these subpoenas, in part, because the presiding judge in the *A+ Financial* enforcement action had suggested that Commission counsel consider sharing any documents produced by the Vantiv Entities with the court-appointed receiver in that enforcement action. However, as a consequence of statutory and regulatory restrictions, Commission counsel could not readily share documents produced in response to a CID with the receiver.¹ The return date on the Rule 45 subpoenas was August 19, 2013. On that date, in a letter to Commission counsel, the Vantiv Entities objected to the subpoenas without producing any documents.

On August 15, 2013, the Vantiv Entities responded to the issuance of the Commission's CIDs by filing a Petition to Quash.² In their Petition to Quash, the Vantiv Entities argue that the Commission's authority to issue the CIDs terminated when Commission counsel issued Rule 45 subpoenas seeking the same information in the *A+ Financial* enforcement action.

II. ANALYSIS

The Commission has broad authority under 15 U.S.C. §57b-1 to issue CIDs to further any "Commission investigation"—*i.e.*, "any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. §57b-1(a)(2). The Commission may issue CIDs at any time before it starts an "adjudicative proceeding." 15 U.S.C. § 57b-1(j)(1).

It is settled that, until the Commission names a person as a defendant or a respondent in a complaint, the Commission is not engaged in an adjudicative proceeding with regard to that person and remains solely in an investigative posture. *Genuine Parts Co. v. F.T.C.*, 445 F.2d

¹ Documents produced to the Commission in response to a CID are non-public, and their disclosure is subject to various statutory and regulatory restrictions. 15 U.S.C. §57b-2; 16 C.F.R. §4.10. Documents produced to the Commission in response to Rule 45 subpoenas are not subject to these restrictions.

² See 15 U.S.C. §57b-1(f) and 16 C.F.R. §2.10. This Petition stayed compliance with the CIDs' original August 19, 2013, return date. 16 C.F.R. §2.10(b).

1382, 1388 (5th Cir. 1971); *United States v. Anaconda Co.*, 445 F. Supp. 486, 496-97 (D.D.C. 1977); *United States v. Associated Merch. Corp.*, 261 F. Supp. 553, 558 (S.D.N.Y. 1966). *See also In re: Subpoena Duces Tecum Addressed to Atlantic Richfield Co., et al.*, No. 741-0019, 1978 WL 434436, at *6 (F.T.C. June 2, 1978) (discussing *In re: Horizon Corp.*, No. 9017, 88 F.T.C. 208, 1976 WL 180725, at *1 (July 28, 1976), where the Commission properly issued investigative subpoenas to investigate third-party lenders who had financed the land development activities of respondents in an FTC administrative adjudicative proceeding).

Because the Commission did not name either of the Vantiv Entities as a defendant in the *A+ Financial* enforcement action, it necessarily follows that the Commission may issue CIDs to them. The cases cited by the Petitioners (Petition at 6-7) do not suggest otherwise. Indeed, they uniformly hold that the Commission may issue CIDs to anyone *at least* until the Commission commences an adjudicatory proceeding against that person.³

Nor is there any inconsistency in the contemporaneous issuance of CIDs and Rule 45 subpoenas. The Commission has good reason to pursue this dual-track effort: the CIDs are justified by the Commission's ongoing investigation of the conduct of the Vantiv Entities for violations of the FTC Act and the TSR, and the Rule 45 subpoenas are justified by the Vantiv Entities' business relationship with the defendants. The issuance of the Rule 45 subpoenas does not somehow void otherwise valid CIDs. The July 24, 2013 CIDs and the Rule 45 subpoenas simply constitute alternative and appropriate routes to the same overriding Commission objective: prompt production of the documents the Commission needs.⁴

Finally, having denied the Petition to Quash, the Commission may now commence CID enforcement proceedings, pursuant to 15 U.S.C. §57b-1(e) and 16 C.F.R. §2.13(b), at any time after the new return date if the Vantiv Entities do not comply. We have full confidence that any proceedings to enforce the Rule 45 subpoenas and the July 24, 2013 CIDs will be managed in a manner that both expeditiously secures the necessary documents from the Vantiv Entities and promotes judicial economy.

³ The Commission may also issue CIDs to a party already in adjudication with the Commission where the Commission is investigating whether that party committed violations beyond those alleged in the pending adjudication. *See Resolution Trust Corp. v. Grant Thornton*, 41 F.3d 1539, 1545-46 (D.C. Cir. 1994) (“[A]n agency’s investigative powers survive the commencement of litigation where the agency seeks to uncover *additional wrongdoing*.” (emphasis in original)); Commission Letter to Mr. Glynn, Counsel to Dr. William V. Judy, Denying Petition to Quash, F.T.C. File No. X000069 (Sept. 10, 2002) (“It is axiomatic that the Commission’s authority to investigate one product is not cut off by the filing of a federal lawsuit relating to another.”); *see also United States v. Litton Indus., Inc.*, 462 F.2d 14, 16 (9th Cir. 1972); *FTC v. Waltham Watch Co.*, 169 F. Supp. 614, 619-20 (S.D.N.Y. 1959).

⁴ On August 22, 2013, after the return date on the Rule 45 subpoenas had passed and the Vantiv Entities had produced no documents, the Commission moved to compel compliance with the subpoenas in the federal district courts for the Southern District of Ohio (as to Vantiv) and the Western District of Kentucky (as to NPC). The Vantiv Entities’ responses are due on September 16, 2013.

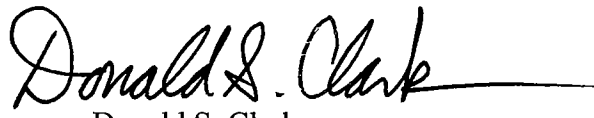
III. CONCLUSION

For all the foregoing reasons,

IT IS HEREBY ORDERED THAT the Petition of Vantiv, Inc. and National Processing Co. be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT Petitioners Vantiv, Inc. and National Processing Co. shall comply in all respects with the July 24, 2013 CIDs on or before September 13, 2013.

By the Commission.

A handwritten signature in black ink, reading "Donald S. Clark", followed by a horizontal line extending to the right.

Donald S. Clark
Secretary

Bandy, Bikram

From: Gordon, Leonard L. <LLGordon@Venable.com>
Sent: Friday, September 13, 2013 10:20 AM
To: Bandy, Bikram
Cc: Knowles, Jeffrey D.; Berge, Ellen Traupman; Baldrige, J. Douglas; Maxson, William; 'Frank Scruggs (fscruggs@bergersingerman.com)'; 'Andrew M. Hinkes (AHinkes@bergersingerman.com)'
Subject: RE: FTC v. A+ Financial Center

Bikram:

Vantiv and NPC will not be participating in the September 18 mediation. We will confirm that to Magistrate Judge Graham shortly.

We will respond to your question regarding the CID later today.

Len

Leonard L. Gordon, Esq. | Venable LLP
t 212.370.6252 | f 212.307.5598 | m 914.462.2297
Rockefeller Center, 1270 Avenue of the Americas, The Twenty-Fourth Floor, New York, NY 10020

LLGordon@Venable.com | www.Venable.com

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Sent: Friday, September 13, 2013 10:11 AM
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Cc: Knowles, Jeffrey D.; Berge, Ellen Traupman; Baldrige, J. Douglas; Maxson, William; 'Frank Scruggs (fscruggs@bergersingerman.com)'; 'Andrew M. Hinkes (AHinkes@bergersingerman.com)'
Subject: FTC v. A+ Financial Center

Len: Two questions that I was wanted to discuss with you when I called you on Wednesday, but you never called me back. Can you please let me know the following:

1. Will NPC and Vantiv be producing documents in response to the CIDs on Sept. 13, as ordered by the Commission in its September 6th ruling?
2. In light of all recent events/court orders, are NPC and Vantiv still not willing to participate in the September 18th mediation, as indicated in your recent filing with the court?

Because the answers to these questions impact our mediation statement that is due by noon today, we would appreciate a response as soon as possible.

If you would like to discuss briefly, please give me a ring.

Bikram Bandy
Federal Trade Commission
Bureau of Consumer Protection / Division of Marketing Practices
600 Pennsylvania Ave., NW | Mailstop H-286
Washington, D.C. 20580
Direct: (202) 326-2978 | Fax: (202) 326-3395
bbandy@ftc.gov

U.S. Treasury Circular 230 Notice: Any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties that may be imposed under the Internal Revenue Code or by any other applicable tax authority; or (b) promoting, marketing or recommending to another party any tax-related matter addressed herein. We provide this disclosure on all outbound e-mails to assure compliance with new standards of professional practice, pursuant to which certain tax advice must satisfy requirements as to form and substance.

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From: [Bandy, Bikram](#)
To: [Leonard L. Gordon \(LLGordon@Venable.com\)](#)
Cc: [Maxson, William](#); [Jeffrey D. Knowles \(jdknowles@Venable.com\)](#); [jdbaldrige@venable.com](#); [Ellen Traupman Berge \(etberge@Venable.com\)](#)
Subject: FW: FTC v. A+ Financial Center
Date: Monday, September 16, 2013 10:32:56 AM

Since you didn't give me an answer to my question regarding the CID (as you said you would), is it now safe to assume that your clients will not be producing documents in response to the CIDs s ordered by the Commission?

Bikram Bandy
Federal Trade Commission
Bureau of Consumer Protection / Division of Marketing Practices
600 Pennsylvania Ave., NW | Mailstop H-286
Washington, D.C. 20580
Direct: (202) 326-2978 | Fax: (202) 326-3395
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Leonard L. Gordon, Esq. | [Venable LLP](#)
t 212.370.6252 | f 212.307.5598 | m 914.462.2297
Rockefeller Center, 1270 Avenue of the Americas, The Twenty-Fourth Floor, New York, NY 10020

LLGordon@Venable.com | www.Venable.com

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Code or by any other applicable tax authority; or (b) promoting, marketing or recommending to another party any tax-related matter addressed herein. We provide this disclosure on all outbound e-mails to assure compliance with new standards of professional practice, pursuant to which certain tax advice must satisfy requirements as to form and substance.

This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-CV-14373-DLG

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

A+ FINANCIAL CENTER, LLC, et al.,

Defendants.

ORDER

THIS CAUSE comes before the Court on, the Federal Trade Commission's ("FTC") Motion to Cancel Court-Ordered Mediation and Request for Expedited Consideration [D.E. 135] and Consent Motion for Expedited Telephonic Status Conference [D.E. 141].

THE COURT has considered the motion, the relevant portions of the record, and is otherwise fully advised in the premises.

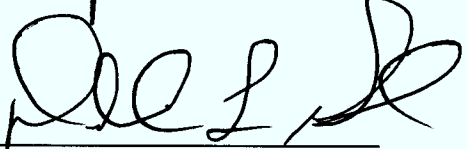
As to the third parties' failure to produce documents in response to Rule 45 subpoenas served upon them by the FTC, the Court previously ruled on this issue in its Sealed Order dated August 19, 2013 [D.E. 117]. While the FTC has provided notice of pending motions related to this matter in other districts, there are no pending motions related thereto before this Court. Moreover, the Court will not cancel the mediation scheduled for

September 18, 2013. Any issues related to the same should be brought before Magistrate Judge Goodman.

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that the Federal Trade Commission's ("FTC") Motion to Cancel Court-Ordered Mediation and Request for Expedited Consideration [D.E. 135] and Consent Motion for Expedited Telephonic Status Conference [D.E. 141] is **DENIED**.

DONE AND ORDERED, this 11th day of September, 2013



DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:13-MC-23437

)
FEDERAL TRADE COMMISSION,)
)
Petitioner,)
v.)
)
NATIONAL PROCESSING CO., and)
)
VANTIV, INC.)
)
Respondents.)

**(Proposed) ORDER COMPELLING RESPONDENTS TO COMPLY
WITH FEDERAL TRADE COMMISSION'S
CIVIL INVESTIGATIVE DEMANDS OR
TO SHOW CAUSE WHY THEY FAILED TO DO SO**

Pursuant to the authority conferred by Section 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §57b-1, Petitioner, the Federal Trade Commission ("Commission"), has invoked the aid of this Court, pursuant to Fed. R. Civ. P. 81(a)(5), for an order requiring the Respondents, National Processing Co, ("NPC") an Vantiv, Inc., to produce documents and to provide a narrative response to an interrogatory in compliance with separate Civil Investigative Demands ("CIDs") issued by the Commission to NPC and Vantiv on July 24,2013, with an original return date of August 19, 2013. The return date was revised to September 13, 2013, following the Commission's denial of an administrative petition to quash the CIDs filed by NPC and Vantiv. The CIDs were issued in aid of an investigation concerning whether the conduct of NPC or Vantiv independently violated Section 5 of the FTC Act, 15 U.S.C. § 45, or the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, through their processing

of advance fees that consumers paid to telemarketers of credit card interest rate reduction services, the defendants in *FTC v. A+ Financial Center, LLC, et al.*, No. 12-CV-14373-DLG (S.D. Fla.).

The Court has considered the Commission's Petition for an Order enforcing its CIDs and the papers filed in support thereof and it appears to the Court that Petitioner has shown good cause for the entry of this Order.

It is, therefore, ORDERED that, within _____ days after the entry of this Order, by October ____, 2013, that NPC and Vantiv each shall: (1) produce forthwith to the Commission: (a) all non-privileged documents responsive to the Commission's CIDs; (b) a privilege log listing all responsive documents withheld based upon a claim of privilege; (c) a narrative response to the single interrogatory in CID; and (d) sworn certifications as to the completeness of the productions and interrogatory response, *OR* (2) by that date to file and serve (by hand or electronically via email) on counsel for the Commission their response(s) to the Commission's petition. To the extent that NPC or Vantiv file oppositions in which they raise any objections not raised in their petition to quash, they must demonstrate good cause for their failure to raise such objections in their administrative petition to quash the CIDs that was filed with and denied by the Commission as provided by 16 C.F.R. § 2.7. Absent such good cause shown, no objections beyond those contained in the Respondents' administrative petition to quash shall be considered. Any reply by the Commission to oppositions filed by NPC or Vantiv shall be filed with the Court and served (by hand or electronically via email) on counsel for NPC and Vantiv. Such reply(ies) shall be filed and served no later than _____ days after service of the latter of any opposition by NPC or Vantiv.

IT IS FURTHER ORDERED that each Respondent filing an opposition shall appear at :__ a.m./p.m. on the _____ day of October , 2013, in Courtroom No. ____, Federal Justice Building, 400 North Miami Avenue, Miami, Florida, 33128, and show cause, if any there be, why this Court should not enter an order, subject to the penalty of contempt, directing them to comply with the Commission's CIDs. Unless the Court determines otherwise, notwithstanding

the filing or pending of any procedural or other motions, all issues raised by the petition and supporting papers, and any opposition to the petition will be considered at the hearing on the petition, and the allegations of said petition shall be deemed admitted unless controverted by a specific factual showing.

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 81(a)(5), that this is a summary proceeding and that no party shall be entitled to discovery without further order of the Court upon a specific showing of need; and the dates for a hearing and the filing of papers established by this Order shall not be altered without prior order of the Court upon good cause shown; and

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 81(a)(5), that a copy of this Order and copies of said Petition and all other papers filed herein (to the extent not previously served), shall be served forthwith upon NPC and Vantiv or their counsel by the Commission by personal service, by certified or registered mail return receipt requested, by overnight express delivery service, or if upon counsel, electronically via email.

SO ORDERED:

United States District/Magistrate Judge

Dated: September ___, 2013, Miami, Florida

PRESENTED BY:

JONATAHAN E. NUECHTERLEIN
General Counsel

DAVID C. SHONKA
Principal Deputy General Counsel

JOHN F. DALY
Deputy General Counsel for Litigation

LESLIE RICE MELMAN
Assistant General Counsel for Litigation

/S/ John Andrew Singer
JOHN ANDREW SINGER
Special Bar No. A5500992
THEODORE J. METZLER
Attorneys

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Federal Trade Commission

DEFENDANTS

National Processing Co.; Vantiv, Inc.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

Jefferson County, KY

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

John Andrew Singer, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, 202-326-3234

Leonard L. Gordon, Venable, 1270 Avenue of the Americas - 25th Floor, New York, NY 10020, 212-370-6252

(d) Check County Where Action Arose: ☒ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 PTF DEF
- Citizen of Another State ☐ 2 ☐ 2 PTF DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 PTF DEF
- Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4 PTF DEF
- Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5 PTF DEF
- Foreign Nation ☐ 6 ☐ 6 PTF DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence Other: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 878 Appeal to District Judge from Magistrate Judgment <input type="checkbox"/> 8 Remanded from Appellate Court

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S)

(See instructions):

a) Re-filed Case ☐ YES ☒ NOb) Related Cases ☒ YES ☐ NO

JUDGE Hon. Donald L. Graham

DOCKET NUMBER 12-CV-14373-DLG

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. §57b-1

LENGTH OF TRIAL via 1 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE

SIGNATURE OF ATTORNEY OF RECORD

9-24-2013

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ IFP _____ JUDGE _____ MAG JUDGE _____