

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_)  
FEDERAL TRADE COMMISSION, )  
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 )  
Plaintiff, )  
 )  
 )  
v. ) 01:17cv03094-WMR  
 )  
HORNBEAM SPECIAL SITUATIONS, )  
LLC, *et al.*, )  
 )  
 )  
Defendants. )  
\_\_\_\_\_)

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND**  
**EQUITABLE MONETARY RELIEF AS TO DEFENDANTS**  
**ISTREAM FINANCIAL SERVICES, INC., KRIS AXBERG, AND**  
**RICHARD JOACHIM**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Injunctive and Other Equitable Relief (“Complaint”), subsequently amended, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), [15 U.S.C. §§ 53\(b\), 57b](#), the Restore Online Shoppers’ Confidence Act (“ROSCA”), [15 U.S.C. §§ 8401 et seq.](#), and the Telemarketing and Consumer Fraud and Abuse Prevention Act, [15 U.S.C. §§ 6101 – 6108](#). Defendants iStream Financial Services, Inc. (“iStream”), Kris Axberg, and Richard “Fred” Joachim (collectively, “iStream Defendants”) and the Commission stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Relief (“Order”) to resolve all matters in dispute in this action against the iStream Defendants.

THEREFORE, IT IS ORDERED as follows:

### **FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Second Amended Complaint charges that the iStream Defendants participated in unfair acts or practices in violation of Section 5 of the FTC Act, [15 U.S.C. § 45](#), and provided substantial assistance to other Defendants in violating the Telemarketing Sales Rule (“TSR”), in violation of Section 310.3(b) of the TSR, [16 C.F.R. § 310.3\(b\)](#), and Section 5(a) of the FTC Act, [15 U.S.C. § 45\(a\)](#).

3. The iStream Defendants neither admit nor deny any allegations alleged in the Second Amended Complaint, or prior complaints, except as specifically stated in this Order. Only for purposes of this action, the iStream Defendants admit the facts necessary to establish jurisdiction.
4. The iStream Defendants waive any claim that they may have under the Equal Access to Justice Act, [28 U.S.C. § 2412](#), concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. The iStream Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

### **DEFINITIONS**

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

- A. “**ACH Debit**” means any completed or attempted debit to a Person’s account at a financial institution that is processed electronically through the Automated Clearing House Network.
- B. “**Acquirer**” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system (*e.g.*, VISA, Mastercard, American Express, and Discover) to authorize Merchants to

accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

- C. **“Billing Information”** means any data that enables any person to access a customer’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.
- D. **“Charge”** or **“Charging”** means causing Billing Information to be submitted for payment, including against a consumer’s credit card, debit card, bank account, phone bill, or other account, or otherwise attempting to collect money or other consideration.
- E. **“Chargeback”** means a procedure whereby an issuing bank or other financial institution charges all or part of an amount of a Person’s credit or debit card transaction back to the Acquirer or other financial institution.
- F. **“Clear(ly) and conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
  - 1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and

audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- G. “**Client**” means any Person, including any subsidiary, parent, or affiliate companies of the Client, (a) who obtains, directly or indirectly, from any Defendant, a Merchant Account, or (b) to whom any Defendant provides any Payment Processing services.
- H. “**Corporate Defendant**” means iStream Financial Services, Inc., and its successors and assigns.
- I. “**Covered Client**” means any Client who requests Payment Processing services from the iStream Defendants for: (a) Outbound Telemarketing for selling or marketing any good or service; (b) any Discount Membership Club; (c) goods or services marketed in conjunction with short-term or payday loan applications or offering to assist consumers in finding payday or short-term loans; or (d) goods or services marketed with a Negative Option Feature.
- J. “**Discount Membership Club**” means any product or service offered or marketed to consumers by a Person whereby consumers pay one-time or recurrent fees in order to access discounts, coupons, or benefits, including, but not limited to, travel benefits, health benefits, home protection, credit

card protection, legal services, weight loss programs, and discounts on goods or services. A Discount Membership Club does not include paid subscription services sold by retail warehouses or other membership organizations that sell a variety of merchandise or services to consumers while offering certain membership benefits including, but not limited to, expedited shipping, bulk quantities, or lower prices.

- D. **“For-Profit Charitable Telemarketing”** means a plan, program, or campaign which is conducted (a) by a for-profit entity on behalf of a bona fide charitable institution qualified to receive tax-deductible contributions; (b) in order to induce the purchase of goods or services or a charitable contribution; and (c) through telephone calls that are initiated by the entity engaged in telemarketing as opposed to the donor.
- K. **“Independent Sales Organization”** or **“ISO”** means any Person who (a) enters into an agreement or contract with a Payment Processor, Acquirer or financial institution to sell or market Payment Processing services to a Merchant or Seller; (b) matches, arranges for, or refers Merchants or Sellers to a Payment Processor or Acquirer for Payment Processing services; or that matches, arranges for, or refers a Payment Processor or Acquirer to Merchants or Sellers for Payment Processing services; or (c) is registered as

an ISO or merchant service provider (“MSP”) with VISA, Mastercard, or any credit card association.

- L. “**iStream Defendants**” means iStream Financial Services, Inc., Kris Axberg, and Richard Joachim, individually, collectively, or in any combination.
- M. “**Individual Defendants**” means Kris Axberg and Richard Joachim, individually and collectively.
- N. “**Merchant**” means a person who is authorized under a written contract with a Payment Processor to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.
- O. “**Merchant Account**” means an account with an Acquirer that authorizes and allows a Merchant to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.
- P. “**Microtransaction**” means a sales transaction where no goods or services are exchanged but excluding transactions performed in accordance with the rules of the credit card networks or Nacha as a valid means of confirming accounts.
- Q. “**Nacha**” means the National Automated Clearing House Association d/b/a



Nacha.

- R. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any good or service, a provision under which the customer’s silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the offer.
- S. **“Outbound Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of good or services in which the telephone calls are initiated by the Person engaged in telemarketing as opposed to the customer, except that Outbound Telemarketing shall not include For-Profit Charitable Telemarketing.
- T. **“Payment Gateway”** means the transmission of consumer payment data between a payment portal (such as a website, mobile phone, card reading terminal, kiosk, or interactive voice response service) and a Payment Processor for the purpose of authorizing the transaction.
- U. **“Payment Processing”** means transmitting sales transaction data on behalf of a Merchant or providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment method or mechanism, including, but not limited to, credit cards, debit cards, prepaid cards, stored value cards, ACH Debits, and Remotely Created Payment

Orders. Whether accomplished through the use of software or otherwise, Payment Processing includes, among other things: (a) reviewing and approving Merchant applications for payment processing services; (b) transmitting sales transaction data or providing the means to transmit sales transaction data from Merchants to Acquirers, Payment Processors, ISOs, or other financial institutions; (c) clearing, settling, or distributing proceeds of sales transactions from Acquirers or financial institutions to Merchants; (d) processing Chargebacks or Returns; or (e) signing a Merchant acceptance agreement on behalf of an Acquirer, or receiving settlement of transaction proceeds from an Acquirer, on behalf of a sponsored Merchant. Provided, however, that a Person does not provide Payment Processing services to a Client where: (i) such Person provides to that Client only Payment Gateway services; or (ii) such Person serves solely as a Sales Agent for another entity, and that entity provides underwriting, monitoring, and risk management functions.

- V. **“Payment Processor”** means any Person providing Payment Processing services in connection with another Person’s sale of goods or services, or in connection with any charitable donation.
- W. **“Person”** means any natural person, organization, or legal entity, including a corporation, limited liability company, partnership, proprietorship,

association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

- X. **“Prospective Client”** means any Person that requests from any iStream Defendant the provision of Payment Processing services. Prospective Client includes any Person who seeks to obtain any iStream Defendant’s Payment Processing services, whether the relationship is formed through a direct contractual relationship with the iStream Defendant or indirectly through the services of a third-party referral source.
- Y. **“Remotely Created Payment Order”** or **“RCPO”** means any payment instruction or order drawn on a Person’s account that is created by the payee or the payee’s agent and which is deposited into or cleared through the check clearing system. The term includes, without limitation, a “remotely created check,” as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR 229.2(fff), but does not include a payment order cleared through an Automated Clearinghouse (ACH) Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 1026.
- Z. **“Return”** means a procedure whereby an issuing bank or other financial institution charges all or part of an amount of a Person’s ACH Debit or RCPO transaction back to the original depository financial institution or

merchant bank.

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

BB. “**Total Return Rate**” means the proportion (expressed as a percentage) of all attempted ACH Debit or RCPO transactions that are returned through the banking system for any reason for a specific client or Person, whether before or after payment, out of the total number of such attempted transactions, calculated separately for each transaction type.

## **ORDER**

### **I.**

IT IS THEREFORE ORDERED that iStream Defendants, whether acting directly or indirectly, are permanently restrained and enjoined from (a) Payment Processing, directly or indirectly, a Remotely Created Payment Order, (b)

licensing, renting, or providing software to any Client for use in Payment Processing Remotely Created Payment Order transactions, and (c) providing Payment Processing to, or acting as an ISO or Sales Agent for, any Covered Client.

## II.

IT IS FURTHER ORDERED that iStream Defendants, iStream Defendants' officers, agents, attorneys, and employees, and all other persons in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from providing Payment Processing to any Client, from acting as an ISO or Sales Agent for, and from providing substantial assistance or support to any Client, when iStream Defendants know, or should know, that the Client is engaged in or is likely to be engaged in a deceptive or unfair act or practice prohibited by Section 5 of the FTC Act or a deceptive or abusive act or practice prohibited by the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 3, including, but not limited to:

- A. debiting or charging of consumer bank or credit card accounts without express informed consent;
- B. failing to disclose, clearly and conspicuously, all products and services that are sold in conjunction with the offered product or service, and the total cost to purchase, receive, or use any such products or services; and

C. misrepresenting, expressly or by implication, the total costs to purchase, receive, or use any product or service; any material aspect of the performance, efficacy, nature or central characteristics of the product or service; and any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies.

### III.

IT IS FURTHER ORDERED that iStream Defendants, iStream Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from providing Payment Processing to any Prospective Client without first engaging in a reasonable screening of the Prospective Client to determine whether the Prospective Client's business practices are, or are likely to be, deceptive or unfair within the meaning of Section 5 of the FTC Act, or in violation of the TSR. Such reasonable screening shall include, but not be limited to:

A. Obtaining from each Prospective Client or a national reputable third-party database:

1. A description of the nature of the entirety of the Prospective Client's business, including describing the nature of all goods and services sold and methods of sale, for which the Prospective

Client seeks Payment Processing services;

2. Each physical address at which the Prospective Client has conducted business within the past two years or will conduct business identified pursuant to subsection (1) of this Section III.A;
3. A list of all Internet websites, the content of which is designed or controlled by the Prospective Client, under or through which the Prospective Client has marketed or intends to market the goods and services for which the Prospective Client seeks Payment Processing services;
4. The names of trade and bank references used by the Prospective Client;
5. The name and address of every originating depository financial institution and Payment Processor used by the Prospective Client during the preceding twelve (12) months;
6. The Prospective Client's past monthly Total Return Rate for the preceding six (6) months, and estimates of future Total Return Rates;
7. A random sample of complaints received by the Prospective Client over the preceding six (6) months for each good or service

marketed by the Prospective Client during that time period;

8. The name(s) of: (a) the principal(s) and controlling Person(s) of the entity; (b) Person(s) with a 25% majority ownership interest in the entity; and (c) any corporate names, business, names, trade names, fictitious names, DBAs, or aliases under which such Persons have conducted business within the past five (5) years; and

9. Whether the Prospective Client or any of the Persons identified in response to Subsection (A)(8) of this Section have ever been: (a) subject to any rules enforcement activity by Nacha or in conjunction with Nacha rules during the preceding two years; (b) placed in a payment card association's Chargeback monitoring program during the preceding two years; or (c) the subject of a complaint filed by or Assurance of Voluntary Compliance with the Commission or any other state or federal law enforcement agency.

B. Comparing the Total Return Rates obtained under Section III.A(6) of this Order to the Return rate thresholds established by Nacha for unauthorized, administrative, and total Returns.



C. Taking reasonable steps to assess the accuracy of the information provided pursuant to Section III.A of this Order, including but not limited to: (1) reviewing the Internet websites, the content of which is designed or controlled by the Prospective Client, or used or approved for use by the Prospective Client to market its goods or services; (2) where available, obtaining and reviewing copies of monthly Payment Processing statements or other reports of transactional data showing the number of transactions and Returns issued by any bank, ISO, or Payment Processor used by the Prospective Client during the preceding six (6) months; (3) obtaining and reviewing a representative sample of current marketing materials for each good or service related to the offer for which the iStream Defendant would provide Prospective Client with Payment Processing; (4) reviewing the Better Business Bureau ratings of the Prospective Client; and (5) reviewing Internet search results related to the Prospective Client. The purpose of such steps is to determine whether the Prospective Client is engaged in the enumerated acts or practices, in which case the iStream Defendant shall not provide Payment Processing services to the Prospective Client. Such acts and practices are:

1. Failing to clearly and conspicuously disclose all products and services that are sold in conjunction with the offered product or

- service, and the total cost to purchase, receive, or use, any products or services that are the subject of the sales offer;
2. Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sales offer;
  3. Failing to clearly and conspicuously disclose all material terms and conditions of an offer;
  4. Misrepresenting, expressly or by implication, any material aspect of the Prospective Client's refund, cancellation, exchange, or repurchase policies; and
  5. Causing billing information to be submitted for payment without the customer's express authorization.

#### **IV.**

IT IS FURTHER ORDERED that iStream Defendants, iStream Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with Payment Processing, are permanently restrained and enjoined from:

- A. Failing to complete the reasonable screening process described in Section III of the Order within a 90-day period for all existing Clients;

- B. Failing to monitor each Client's transactions to determine whether the Client is engaged in practices that are deceptive or unfair in violation of Section 5 of the FTC Act, or deceptive or abusive in violation of the TSR. Such monitoring shall include, but not be limited to, (a) regularly reviewing Clients' Internet websites, the content of which is designed or controlled by the Client, including from an IP address that is not associated with the iStream Defendants; (b) regularly reviewing each Client's Total Return Rates, and reasons provided for Returns, as well as examining any unusual or suspect transaction patterns, values, and volume; (c) regularly reviewing Clients' Better Business Bureau ratings; and (d) regularly reviewing Internet search results related to the Client;
- C. Failing to calculate and update at least on a monthly basis for each Client the Total Return Rate. For any Client with multiple processing locations or accounts, entity IDs, or Merchant Accounts, the calculation of the Total Return Rate shall be made for each of the Client's individual locations or accounts, and in the aggregate for each Client;
- D. Failing to immediately conduct a reasonable investigation, which must be completed in 60 days, of the cause for any Total Return Rate that exceeds two and one-half percent (2.5%) and whose total number of ACH Debit transactions with the Payment Processor exceeds 50 transactions per

month, in two of the past six (6) months.

1. During the investigation, Defendants shall notify the Client that Payment Processing services for the Client are under investigation and may be suspended or terminated.
2. Reasonable investigation includes but is not limited to verifying and updating the truth and accuracy of information gathered in compliance with Section III of this Order and any other advertising of the Client; confirming, through means other than making inquiries of the Client, that the Client has obtained required consumer authorizations for the transactions; contacting Better Business Bureaus to gather detailed information, including complaints and other relevant information, regarding the Client; reviewing from an IP address that is not associated with iStream Defendants the Internet websites, the content of which is designed or controlled by the Client, or used or approved for use by the Client to market its goods and services; searching publicly available sources for legal actions taken by the Commission or other state or federal law enforcement agencies against the Client, including any Assurances of Voluntary Compliance; and conducting 'test' shopping to determine the Client's sales practices, where possible.

3. At the completion of the investigation, the Defendant shall make a written report of the investigation results. Unless the written report establishes facts that demonstrate, by clear and convincing evidence, that the Client's business practices, related to the offer(s) for which Defendant provides Payment Processing services, are not a deceptive or unfair act or practice in violation of Section 5 of the FTC Act or a deceptive or abusive act or practice prohibited by the TSR, the Defendant must terminate Payment Processing services for the Client; and

E. Failing to immediately stop processing sales transactions for any Client that iStream Defendants know or should know is engaged in tactics including, without limitation, Microtransactions, to avoid fraud and risk monitoring programs established by any financial institution, Acquirer, or the operators of any payment system.

**V.**

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$2,314,221.65 is entered in favor of the Commission against iStream Defendants, jointly and severally, as monetary relief.

B. The iStream Defendants are ordered to pay to the Commission

\$2,314,221.65, which, the iStream Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of the entry of this Order, by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

**VI.**

IT IS FURTHER ORDERED that:

A. The iStream Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

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

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

D. iStream Defendants shall provide to the Commission their Taxpayer

Identification Numbers (Social Security Numbers or Employer Identification Numbers), which may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other relief (including consumer information remedies) as it determines to be reasonably related to iStream Defendants' practices alleged in the Complaint. The iStream Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

## VII.

IT IS FURTHER ORDERED that iStream Defendants and their officers, agents, employees, attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable the

Commission to efficiently administer consumer redress, where such information is in the possession of the iStream Defendants, iStream Defendants represent that they have provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, iStream Defendants must provide it, in the form prescribed by the Commission, within 14 days.

- B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, Social Security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank, or other financial account) of any person which any Defendant obtained prior to entry of this Order in connection with Payment Processing services for Remotely Created Payment Orders or a Covered Client; and
- C. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Commission.

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



**VIII.**

IT IS FURTHER ORDERED that iStream Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. iStream Defendants must provide truthful and complete information, evidence, and testimony. Individual Defendants must appear and Corporate Defendant must cause its officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 21 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

**IX.**

IT IS FURTHER ORDERED that iStream Defendants obtain acknowledgments of receipt of this Order:

- A. Each of the iStream Defendants, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 10 years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and

each Corporate Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in Payment Processing; and (3) any business entity resulting from any change in structure as set forth in Section X. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

**X.**

IT IS FURTHER ORDERED that iStream Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each iStream Defendant must submit a compliance report, sworn under penalty of perjury.
1. Each iStream Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers,

and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order, and (e) provide a copy of each Order Acknowledgement obtained pursuant to this Order, unless previously submitted to the Commission.

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

- B. For 10 years after entry of this Order, each iStream Defendant must

submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following.

1. Each iStream Defendant must report any change in: (a) any designated point of contact; or (b) the structure of the Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
  2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.
- C. Each iStream Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be

sworn under penalty of perjury must be true and accurate and comply with [28 U.S.C. § 1746](#), such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to [DEbrief@ftc.gov](mailto:DEbrief@ftc.gov) or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The subject line must begin: *FTC v. Hornbeam Special Situations, LLC, et al.*, Case No. 1:17cv-03094-WMR, X170047.

## **XI.**

IT IS FURTHER ORDERED that iStream Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendant and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly must create and

retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Transactional data records on all Payment Processing Clients that reflect the number and dollar amount of all attempted transactions, cleared transactions, transactions Returned, and the reasons provided for any such Return, to the extent Defendant is able to create such records;
- C. Records of all refund and Return requests made with respect to Clients, whether received directly or indirectly, such as through a third party, and any response;
- D. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- E. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response; and
- F. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

**XII.**

IT IS FURTHER ORDERED that, for the purpose of monitoring iStream Defendants' compliance with this Order:


- A. Within 14 days of receipt of written notice from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by [Federal Rules of Civil Procedure 29, 30](#) (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to iStream Defendants or any individual or entity affiliated with iStream Defendants, without the necessity of identification or

prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XIII.**

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

SO ORDERED this 24th day of February, 2022.

  
\_\_\_\_\_  
WILLIAM M. RAY, II  
UNITED STATES DISTRICT JUDGE



**SO STIPULATED AND AGREED:**

**FEDERAL TRADE COMMISSION:**



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KORIN EWING FELIX

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Attorneys for Plaintiff

FEDERAL TRADE COMMISSION

**FOR SETTLING DEFENDANTS:**

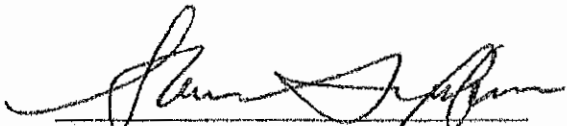


Date: 1-21-22

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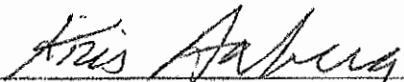
Attorneys for Defendant iStream  
Financial Services, Inc., Kris Axberg,  
and Richard Joachim

**SETTLING DEFENDANTS:**



Date: 1/21/22

Shawn Griffin, Chief Executive Officer,  
on behalf of iStream Financial Services, Inc.



Date: 1/21/22

KRIS AXBERG, Individually and  
as Chairman of the Board of Directors  
for iStream Financial Services, Inc.



Date: 1-21-22

RICHARD JOACHIM, Individually  
and as President of iStream  
Financial Services, Inc.