

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BLUESNAP, INC., a corporation,

BLUESNAP PAYMENT SERVICES
LTD, a corporation,

RALPH DANGELMAIER, individually
and as an officer of BLUESNAP, INC.,
and

TERRY MONTEITH, individually and as
an officer of BLUESNAP, INC.,

Defendants.

Case No. _____

**STIPULATED ORDER FOR
PERMANENT INJUNCTION,
MONETARY JUDGMENTS,
AND OTHER RELIEF**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction, Monetary Relief, and Other Relief (“Complaint”), for a permanent injunction, monetary relief, and other relief in this matter, pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-08. The Commission and Defendants stipulate to the entry of this

Stipulated Order for Permanent Injunction, Monetary Judgment, and Other Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and in violation of the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, by processing or arranging for processing of charges to consumers’ credit and debit cards on behalf of Defendants’ Clients.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. 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. Defendants 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 apply:

A. “**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, Discover) to authorize Merchants to accept, transmit, or process payment by credit card through the credit card system for money, products or services, or anything else of value.

B. “**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.

C. “**Chargeback Rate**” means the proportion (expressed as a percentage) of Chargebacks out of the total number of attempted credit or debit card sales transactions.

D. “**Client**” means any Person (a) who obtains, directly or indirectly, from any Defendant a Merchant Account, or (b) to whom any Defendant provides any Payment Processing services.

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

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

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

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

4. Presenting or depositing into, or causing or allowing another to present or deposit into, the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is the result of a credit card transaction between the cardholder and the Merchant, through a Merchant Account that is held in the name of a Sponsored Merchant that is not the Merchant.

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

G. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

1. **“Corporate Defendants”** means BlueSnap, Inc., BlueSnap Payment Services Ltd, and their successors and assigns.

2. **“Individual Defendants”** means Ralph Dangelmaier and Terry Monteith.

H. **“Financial Institution”** means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)). An institution that is significantly engaged in financial activities is a Financial Institution.

I. **“Fraud Monitoring”** or **“Risk Monitoring Program”** means any program established by a credit card association (e.g., Visa, Mastercard, American Express, Discover), Acquirer, Financial Institution, or operator of a payment system to monitor or detect potentially fraudulent, illegal, or unauthorized Merchant transactions and activity. Such programs include any program established to monitor Chargebacks or Chargeback Rates (e.g., the Visa Dispute Monitoring Program), reasons provided for Chargeback transactions, fraudulent or unauthorized transactions (e.g., Mastercard’s Global Merchant Audit Program (“GMAP”), Visa Fraud Monitoring Program), and Merchants classified or defined by Visa as high risk or “High-Brand Risk” Merchants (however titled), as periodically revised or updated from time to time.

J. **“High Risk Client”** means any Client that (a) offers to sell, sells, promotes, or markets, any of the following goods or services: credit repair; timeshare cancellation; spyware; cryptocurrency; dating/escort services; Money

Making Opportunities; Multi-Level Marketing Programs; nutraceuticals or personal enhancement products with a Negative Option Feature; essay writing/paper mills; Technical Support Products or Services; (b) engages in Outbound Telemarketing with respect to the goods and services for which the High Risk Client seeks Payment Processing services (other than the sale of software to businesses by integrated software vendors who sell Corporate Defendants' Payment Processing services); or (c) has previously been named in a complaint, settlement, or assurance of voluntary compliance involving the Federal Trade Commission, another law enforcement agency, or a state attorney general in a case or other matter involving fraud or unfair, deceptive, or abuse practices, including but not limited to violations of Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule, 16 C.F.R. Part. 310, or any other state or federal consumer protection law, and where the complaint, settlement, or assurance of voluntary compliance is available, viewable, or accessible through a search of at least one major Internet search engine routinely used by Defendants.

K. **“Independent Sales Organization” or “ISO”** means any Person that:

1. Enters into an agreement or contract with a Payment Processor, Acquirer, or Financial Institution to sell or market Payment Processing services to a Merchant;

2. Matches, arranges for, or refers Merchants to a Payment Processor or Acquirer for Payment Processing services, or that matches, arranges for, or refers a Payment Processor or Acquirer to Merchants for Payment Processing services; or

3. Is registered as an ISO or merchant service provider (“MSP”) with Visa, Mastercard, or any credit card association.

L. “**Merchant**” means any Person engaged in, or attempting to engage in, the sale or marketing of any goods or services or a charitable contribution. The term “Merchant” does not include a Payment Facilitator, but does include a Sponsored Merchant.

M. “**Merchant Account**” means any account with an Acquirer or other Financial Institution, service provider, Payment Processor, ISO, Payment Facilitator, or other entity that enables an individual, a business, or other organization to accept payments of any kind.

N. “**Money Making Opportunity**” means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

O. “**Multi-Level Marketing Program**” means any business in which participants pay money or purchase products or services in return for which the

participants obtain the right to (a) recruit others into the program or have others placed in the participant's downline and (b) receive payment or other compensation that is based, in whole or in part, upon purchases, sales, or any other activities of the participant's downline. Downline refers to the collection of participants whom a participant has personally recruited (first level), any participants and customers recruited by first level participants (second level), any participants and customers recruited by second level participants (third level), and so forth, however denominated.

P. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any product or service, a provision under which the consumer's silence or failure to take an affirmative action to reject products or services or to cancel the agreement is interpreted by the Client, seller, or Merchant as acceptance of the offer. Offers or agreements with Negative Option Features include, but are not limited to: (a) free or introductory price trial offers in which the consumer receives a product or service for free or at a nominal or introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the product or service if he or she does not take affirmative action to cancel, reject, or return the product or service before the end of that period; (b) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller

or provider within a certain time not to ship the products; and (c) automatic renewal plans in which the seller or provide automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

Q. **“Outbound Telemarketing”** means any plan, program, or campaign that is conducted to induce the purchase of products or services by use of one or more telephones, and which involves a telephone call initiated by a Person other than the consumer, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.

R. **“Payment Facilitator”** means an entity that is registered with a credit card system by an Acquirer to facilitate transactions on behalf of Sponsored Merchants.

S. **“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.

T. **“Payment Processing”** means providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment mechanism, including, but not limited to, credit, debit, prepaid, or stored value cards. Whether accomplished through the use of software or otherwise, Payment Processing includes, among other things: (a) reviewing and approving

Merchant applications for Payment Processing services; (b) 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 (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 such Person provides to that Client only Payment Gateway services.

U. **“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.

V. **“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.

W. **“Prevented Chargeback”** means a consumer initiated Chargeback that is resolved by the Merchant issuing the consumer a refund before the Chargeback is transmitted through the credit card network.

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

Y. **“Sale of the Corporate Defendants”** means a transaction in which: (a) one or more Persons acquires a controlling interest in BlueSnap, Inc. or BlueSnap Payment Services Ltd; (b) one or more Persons acquires substantially all the assets of BlueSnap, Inc.; or (c) BlueSnap, Inc. substantially divests from BlueSnap Payment Services Ltd.

Z. **“Shell Company”** means an entity with (1) no or nominal operations; and (2) either no nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.

AA. **“Sponsored Merchant”** means any Person or entity to whom a Payment Facilitator agrees to provide Payment Processing services.

BB. “**Technical Support Product or Service**” means any software or service marketed to repair, maintain, or improve the performance or security of a computer (including smart phones), including registry cleaners, anti-virus programs, and computer or software diagnostic services without regard to whether the service is being offered by Persons communicating by an inbound or outbound telephone call, online, or in-person; provided, however, that it shall not include such software or services marketed solely to businesses (“business-to-business” sales).

ORDER

I. BAN ON PROCESSING FOR CERTAIN MERCHANT CATEGORIES

IT IS ORDERED that Defendants, whether acting directly or through an intermediary, are each permanently restrained and enjoined from Payment Processing, and from assisting others engaged in Payment Processing, whether directly or through an intermediary, for any Person:

A. Offering to sell, selling, promoting or marketing debt collection, debt counseling, debt settlement, debt relief, or debt consolidation; or

B. Listed on the Mastercard Member Alert to Control High-Risk Merchants (“MATCH”) list for any of the following reasons: excessive chargebacks or fraud, fraud conviction, laundering, identification as a Questionable Merchant per the Mastercard Questionable Merchant Audit Program, merchant

collusion, illegal transactions, or identity theft, provided that Defendants are able to access the MATCH list directly or through an ISO, Payment Processor, Acquirer, or other Financial Institution.

II. PROHIBITION ON CREDIT CARD LAUNDERING

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, 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 each permanently restrained and enjoined from Credit Card Laundering, and from assisting others engaged in Credit Card Laundering, whether directly or through an intermediary.

III. PROHIBITIONS RELATED TO MERCHANT ACCOUNTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, 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:

A. Making, or assisting others in making, directly or by implication, any false or misleading statement, or providing any false or misleading information, in order to obtain Payment Processing services, including but not limited to false or misleading statements or information about the geographic location, name, identity, corporate form, business type, or Merchant Category Code of the

Merchant; and

B. Engaging in any tactics to avoid any Fraud Monitoring or Risk Monitoring Program, including, but not limited to:

1. Balancing or distributing sales transaction volume or sales transaction activity among multiple Merchant Accounts or merchant billing descriptors to avoid a Fraud Monitoring or Risk Monitoring Program;
2. Splitting a single sales transaction into multiple smaller transactions to avoid a Fraud Monitoring or Risk Monitoring Program;
3. Using a Shell Company to apply for a Merchant Account;
4. Opening multiple Merchant Accounts in the names of other companies for the same underlying Merchant, in order to conceal the Merchant's true identity;
5. Misrepresenting whether a Merchant is engaged in Outbound Telemarketing; and
6. Failing to assess the cause of excessive Chargebacks in connection with the use of Chargeback mitigation services or other tools designed to create Prevented Chargebacks.

IV. PROHIBITION AGAINST ASSISTING AND FACILITATING

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, 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 substantial assistance or support to any Person that they know, or should know, is engaged in:

A. Misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of any goods or services;

B. Misrepresenting, directly or by implication, any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policies;

C. The unauthorized debiting or charging of consumer bank or credit card accounts; or

D. Any deceptive, unfair, or abusive act or practice prohibited by Section 5 of the FTC Act or by the TSR.

V. SCREENING OF PROSPECTIVE HIGH RISK CLIENTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, 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 Payment Processing or acting as an ISO or Referral Agent for any prospective High Risk Client without first engaging in a reasonable screening of the prospective High Risk Client to determine whether the prospective High Risk 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. Establishing and maintaining policies and procedures designed to identify prospective Merchants who may seek to become High Risk Clients.

B. Where Defendants receive information that a Merchant may be a prospective High Risk Client, obtaining from each prospective High Risk Client, including the principal(s) and controlling Person(s) of the entity, any Person(s) with a majority ownership interest in the entity, and any corporate name, trade name, fictitious name or alias under which such Person(s) conduct or have conducted business:

1. A description of the nature of the prospective High Risk Client's business, including the nature of the goods and services for which the prospective High Risk Client seeks Payment Processing services, and a description of the means of advertising, marketing, and sales used (i.e., Outbound Telemarketing, Internet sales);

2. Scripts, copies of Internet websites, and other marketing materials;

3. The name of (a) the principal(s) and controlling Person(s) of the entity; (b) Person(s) with a twenty-five percent (25%) or greater 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;

4. A list of all Internet websites, the content of which is designed or controlled by the prospective High Risk Client, under or through which the prospective High Risk Client has marketed or intends to market the goods and services for which the prospective High Risk Client seeks Payment Processing services;

5. Each physical address at which the prospective High Risk Client has conducted business in the past year or will conduct the business(es) identified pursuant to subsection (1) of this Section V.B;

6. The name and address of every Acquirer, and Payment Processor used by the prospective High Risk Client during the preceding two years, and whether the High Risk Client is still using their service, or has been terminated or a contract was not renewed, and the reasons for the termination or non-renewal;

7. The prior six (6) months of Payment Processing statements, if available;

8. The prospective High Risk Client's past Chargeback Rate for the preceding six (6) months, and estimates of future Chargeback Rates;

9. Information regarding whether the prospective High Risk Client or any of the Person(s) or entities identified in response to Section V.B.3 have ever

been: (a) placed in any Fraud Monitoring or Risk Monitoring Program; (b) terminated by a Payment Processor, Acquirer, Financial Institution, or operator of a payment system due to fraud, Credit Card Laundering, or excessively high Chargeback Rates; or (c) the subject of a complaint filed by or Assurance of Voluntary Compliance obtained by the Commission or any other state or federal law enforcement agency.

C. Taking reasonable steps to assess the accuracy of the information provided pursuant to Section V.B of this Order, including but not limited to: reviewing the Internet websites used by the prospective High Risk Client to market its goods or services; reviewing Internet search results related to the prospective High Risk Client, its principal(s) and controlling Person(s), and Person(s) with a majority ownership interest in the entity; reviewing online consumer complaints and complaints maintained by the Better Business Bureau relating to the prospective High Risk Client; obtaining and reviewing copies of monthly Payment Processing statements issued by any bank, ISO, Referral Agent, Acquirer, or Payment Processor used by the High Risk Client during the preceding six (6) months; and obtaining and reviewing a representative sample of current marketing materials for each good or service related to the offer for which Defendants would provide the prospective High Risk Client with Payment Processing, ISO, or Referral Agent services (or in the case of a High Risk Client that refuses to confirm

the production of requested materials, refusing to provide Payment Processing or to act as an ISO or Referral Agent for the prospective High Risk Client). The purpose of such steps is to determine whether the prospective High Risk Client is engaged in any of the following acts or practices, in which case the Defendants shall not provide Payment Processing or act as an ISO or Referral Agent for the prospective High Risk Client:

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 High Risk Client's refund, cancellation, exchange, or repurchase policies;
5. Causing billing information to be submitted for payment without the customer's express authorization; or

6. Violating the TSR, a copy of which is attached as Attachment

A.

VI. MONITORING OF HIGH RISK CLIENTS

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, 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, in connection with Payment Processing or acting as an ISO or Referral Agent, are permanently restrained and enjoined from:

A. Failing to monitor the sales activity of all current Clients to identify Clients that should be designated as High Risk Clients requiring additional screening pursuant to Section V of this Order, and for all newly designated and newly onboarded High Risk Clients, failing to complete the reasonable screening process described in Section V of the Order within ninety (90) days after the effective date of this Order;

B. Failing to monitor each High Risk Client's transactions to determine whether the High Risk Client is engaged in practices that are deceptive or unfair in violation of Section 5 of the FTC Act or the TSR. Such monitoring shall include, but not be limited to:

1. Regularly reviewing High Risk Clients' Internet websites from an IP address that is not associated with Defendants and saving copies of such websites;

2. Regularly reviewing each High Risk Client's Chargeback Rates and reasons provided for these Chargebacks, as well as examining any unusual or suspect transaction patterns, values, and volume;

3. Regularly reviewing consumer complaints related to requests for Chargebacks and complaints found on publicly available complaint mediums (i.e., online consumer complaint boards), or received from any third party, including Financial Institutions, credit card associations, Better Business Bureaus, and operators of payment systems; and

4. Regularly reviewing Internet search results related to the High Risk Client;

C. Failing to monitor each High Risk Client's transactions to detect indicia that the High Risk Client is engaged in Credit Card Laundering, tactics to conceal its true identity, or tactics to evade any Fraud Monitoring or Risk Monitoring Program. Such indicia include:

1. Unusual or suspicious transactions, patterns, trends, values, and volume;

2. Opening and closing multiple Merchant Accounts for the same underlying Merchant under different business names, for no apparent legitimate business or lawful purpose;

3. Payment Processing of transactions through Merchant Accounts for time periods of less than three months, or during alternating months, for no apparent legitimate business or lawful purpose;

4. Distributing sales transaction volume across multiple Merchant Accounts of any payment system; and

5. Using an incorrect Merchant Category Code (MCC);

D. Failing to calculate and update at least on a monthly basis for each High Risk Client the Chargeback Rate. For any Client with multiple processing accounts, the calculation of the Chargeback Rate shall be made for each of the High Risk Client's individual processing accounts, and in the aggregate for each High Risk Client;

E. Failing to immediately conduct a reasonable investigation of any High Risk Client who, in two of the past six months, had a monthly Chargeback Rate in excess of one percent (1%) and more than fifty (50) Chargebacks in a month. A reasonable investigation includes, but is not limited to:

1. Verifying and updating the truth and accuracy of information gathered in compliance with Section V of this Order and any other advertising of the High Risk Client;
 2. Confirming that the High Risk Client has obtained required consumer authorizations for the transactions;
 3. Contacting Better Business Bureaus to gather detailed information, including complaints and other relevant information, regarding the High Risk Client;
 4. Reviewing the consumer complaints and reasons provided for all Chargeback transactions;
 5. Reviewing from an IP address that is not associated with Defendants the Internet websites used by the High Risk Client to market its goods and services;
 6. Searching publicly available sources for legal actions taken by the Commission or other state or federal law enforcement agencies against the High Risk Client, including any assurances of voluntary compliance; and
 7. Conducting “test” shopping to determine the High Risk Client’s sales practices, where possible;
- F. Failing to stop processing sales transactions and close all processing accounts for any High Risk Client investigated pursuant to Subsection E, above,

within 60 days of commencing the investigation, unless Defendants draft a written report establishing facts that clearly demonstrate that the High Risk Client's business practices related to the offer(s) for which Defendants provide Payment Processing are not deceptive or unfair in violation of Section 5 of the FTC Act and are not in violation of the TSR; and

G. Failing to immediately stop processing sales transactions and close all processing accounts for any High Risk Client that Defendants know or should know is engaged in tactics to avoid Fraud Monitoring or Risk Monitoring Programs, including, but not limited to: using Shell Companies or nominees (including nominee owners, officers, or managers) to obtain Merchant Accounts, balancing or distributing sales transaction volume or sales transaction activity among multiple Merchant Accounts or Merchant billing descriptors, splitting a single sales transaction into multiple smaller transactions, or causing sham sales transactions, including sales transactions by a Merchant to itself.

VII. MONETARY JUDGMENTS

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Ten Million Dollars (\$10,000,000) is entered in favor of the Commission against Corporate Defendants, jointly and severally, as monetary relief.

B. Judgment in the amount of Five Million Dollars (\$5,000,000) is

entered in favor of the Commission against Individual Defendants, jointly and severally, as monetary relief. This judgment is joint and several with the judgment against Corporate Defendants in Subsection A above.

C. Corporate Defendants are ordered to pay to the Commission Ten Million Dollars (\$10,000,000), by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission, as follows:

1. Five Million Dollars (\$5,000,000) within 7 days of entry of this Order, which, as Corporate Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission;
2. Five Million Dollars (\$5,000,000) by no later than two years after the date this Order is entered.

D. Without the prior written consent of the Commission (which consent may be withheld in its sole and absolute discretion), for so long as the payment specified in Subsection C.2 above (the “Deferred Payment”) remains outstanding, the Corporate Defendants shall not pay any dividends, distributions, or other payments in respect of their equity securities other than (i) reimbursement of ordinary course expenses or (ii) repurchases of stock held by former employees (excluding the Individual Defendants).

E. In the event that there is a Sale of the Corporate Defendants within two years of entry of this Order, the Deferred Payment shall be paid by no later than the earlier of: (a) thirty (30) days after the closing of the Sale of the Corporate Defendants; or (b) two years after the date this Order is entered.

F. Time is of the essence for the Deferred Payment. In the event such payment is not made by the due date set forth in this Section, the entire outstanding balance of the Judgment in Subsection A.1 above shall be immediately due and payable to the Commission, together with interest as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, and the Commission shall be entitled to exercise immediately any and all rights and remedies against Defendants and their assets to collect the full amount of the judgment and interest thereon, less any amounts already paid; provided, however, that the Commission's rights and remedies shall be subject to the terms of the Subordination Agreement attached as Attachment B.

VIII. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. 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 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 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. Each Defendant acknowledges that Defendant's Employer Identification Number, Social Security Number, or other Taxpayer Identification Number ("TIN"), including all TINs that Defendants previously provided, may be used by the Commission for reporting and other lawful purposes, including collecting on any delinquent amount arising out of this Order in accordance with 31 U.S.C. § 7701.

E. All money received by the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for consumer relief, such as 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 such redress is completed, the Commission may apply any remaining

money for such related relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for relief is to be deposited to the U.S. Treasury. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

IX. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, and employees, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Defendants represent that they have provided this information to the Commission. If a representative of the Commission requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 14 days.

X. ORDER ACKNOWLEDGMENTS

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

A. Each Defendant, 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 5 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 having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

XI. COMPLIANCE REPORTING

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

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

1. Each 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 Acknowledgment 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 Defendant must submit a

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

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any 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 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 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. BlueSnap, Inc., Matter No. 2223008.

XII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years.

Specifically, Corporate Defendant, in connection with Payment Processing, 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 showing the revenues from all goods or services sold;

B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone

numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. records of all consumer complaints concerning the subject matter of the Order, including Chargeback requests, Chargeback dispute documentation, and refund requests with respect to High Risk Clients, whether received directly or indirectly, such as through a third party, and any response;

D. records of all Client files and transactions, including Merchant applications, underwriting documents, screening and monitoring records, investigation records and reports, bank verification records, and documentation concerning processed transactions and Chargeback transactions; and

E. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

XIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and any failure to transfer assets as required by this Order:

A. Within 14 days of receipt of a written request 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 depositions by remote means), 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 Defendants or any individual or entity affiliated with 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.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XIV. RETENTION OF JURISDICTION

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


SO ORDERED this ___ day of _____, 202__.

UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:


FOR PLAINTIFF:

FEDERAL TRADE COMMISSION


Margaret Burgess
Alan Bakowski
Natalya Rice
Attorneys
Federal Trade Commission
Southeast Regional Office
233 Peachtree Street, NE, Ste. 1000
Atlanta, GA 30303
(202) 250-4693; mburgess1@ftc.gov
(404) 656-1363; abakowski@ftc.gov
(202) 455-8587; nrice@ftc.gov

Date: May 1, 2024

FOR DEFENDANTS BLUESNAP, INC. AND BLUESNAP PAYMENT SERVICES LTD:


Antony P. Kim
Barrie VanBrackle
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20015
Tel: (202) 637-3394
antony.kim@lw.com
barrie.vanbrackle@lw.com

Date: March 14, 2024

Scott D. Joiner
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Tel: (415) 395-8878
scott.joiner@lw.com

Counsel for BlueSnap, Inc. and BlueSnap Payment Services Ltd.

BLUESNAP, INC.

By: Daniel Woodruff
Daniel Woodruff, General Counsel

Date: March 15, 2024

BLUESNAP PAYMENT SERVICES LTD

By: Daniel Woodruff
Daniel Woodruff, General Counsel

Date: March 15, 2024

FOR DEFENDANTS RALPH DANGELMAIER AND TERRY MONTEITH

Date: _____

Leonard L. Gordon
VENABLE, LLP
151 West 42nd Street
New York, Ny 10035
212-370-6252
llgordon@venable.com

Ellen Traupman Berge
VENABLE, LLP
600 Massachusetts Avenue, NW
Washington DC 20001
202-344-4704
etberge@venable.com

Counsel for Ralph Dangelmaier and Terry Monteith

RALPH DANGELMAIER

Date: _____

Ralph Dangelmaier

TERRY MONTEITH

Date: _____

Terry Monteith

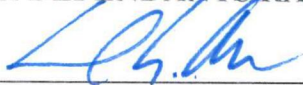
BLUESNAP, INC.

By: _____ Date: _____
Daniel Woodruff, General Counsel

BLUESNAP PAYMENT SERVICES LTD

By: _____ Date: _____
Daniel Woodruff, General Counsel

FOR DEFENDANTS RALPH DANGELMAIER AND TERRY MONTEITH



Date: 3-15-24

Leonard L. Gordon
VENABLE, LLP
151 West 42nd Street
New York, Ny 10035
212-370-6252
llgordon@venable.com

Ellen Traupman Berge
VENABLE, LLP
600 Massachusetts Avenue, NW
Washington DC 20001
202-344-4704
etberge@venable.com

Counsel for Ralph Dangelmaier and Terry Monteith

RALPH DANGELMAIER


Ralph Dangelmaier

Date: 3/15/2024

TERRY MONTEITH

Terry Monteith

Date: _____

BLUESNAP, INC.

By: _____ Date: _____
Daniel Woodruff, General Counsel

BLUESNAP PAYMENT SERVICES LTD

By: _____ Date: _____
Daniel Woodruff, General Counsel

FOR DEFENDANTS RALPH DANGELMAIER AND TERRY MONTEITH

 _____ Date: 3-15-24

Leonard E. Gordon
VENABLE, LLP
151 West 42nd Street
New York, Ny 10035
212-370-6252
llgordon@venable.com

Ellen Traupman Berge
VENABLE, LLP
600 Massachusetts Avenue, NW
Washington DC 20001
202-344-4704
etberge@venable.com

Counsel for Ralph Dangelmaier and Terry Monteith

RALPH DANGELMAIER

_____ Date: _____
Ralph Dangelmaier

TERRY MONTEITH

 _____ Date: 3/15/2024
Terry Monteith

ATTACHMENT A

Federal Trade Commission

§ 310.2

PART 310—TELEMARKETING SALES RULE

Sec.

- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.
- 310.8 Fee for access to the National Do Not Call Registry.
- 310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2 Definitions.

(a) *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 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.

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(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Cash to cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. For purposes of this definition, *money transfer provider* means any person or financial institution that provides cash to cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution. The term *cash to cash money transfer* includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693a, that is a cash to cash transaction; however it does not include any transaction that is:

- (1) An electronic fund transfer as defined in section 903 of the EFTA;
- (2) Covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or
- (3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(g) *Cash reload mechanism* is a device, authorization code, personal identification number, or other security measure that makes it possible for a person to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) form

that can be used to add funds to a general use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an account with a payment intermediary. For purposes of this definition, a cash reload mechanism is not itself a general use prepaid debit card or a swipe reload process or similar method in which funds are added directly onto a person's own general use prepaid card or account with a payment intermediary.

(h) *Charitable contribution* means any donation or gift of money or any other thing of value.

(i) *Commission* means the Federal Trade Commission.

(j) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(k) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(l) *Credit card sales draft* means any record or evidence of a credit card transaction.

(m) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(n) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(o) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(p) *Donor* means any person solicited to make a charitable contribution.

(q) *Established business relationship* means a relationship between a seller and a consumer based on:

- (1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the

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consumer and seller, within the eight (8) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(r) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(s) *Investment opportunity* means any thing, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(t) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(u) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(v) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(w) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(x) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(y) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(z) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(aa) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(bb) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(cc) *Remotely created payment order* means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and 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(ff), 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.

(dd) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(ee) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(ff) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(gg) *Telemarketing* means a plan, program, or campaign which is conducted

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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. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

(hh) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An “external upsell” is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An “internal upsell” is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77557, Dec. 14, 2015]

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay⁶⁵⁹ for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;⁶⁶⁰

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller’s policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person’s chances of winning; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

⁶⁵⁹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment. In the case of debt relief services, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before the consumer enrolls in an offered program.

⁶⁶⁰ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

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(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); and

(viii) In the sale of any debt relief service:

(A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest; and

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in

the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

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(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,⁶⁶¹ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁶⁶² Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁶⁶³

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or

donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;

(B) The number of debits, charges, or payments (if more than one);

(C) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(D) The amount(s) of the debit(s), charge(s), or payment(s);

(E) The customer's or donor's name;

(F) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(G) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(H) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

⁶⁶¹ Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁶⁶² Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁶⁶³ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to

a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77558, Dec. 14, 2015]

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not

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apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(1) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in §310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(7)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free to pay conversion feature, the seller or telemarketer must:

(A) Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) Obtain from the customer his or her express agreement to be charged for the goods or services and to be

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charged using the account number pursuant to paragraph (a)(7)(i)(A) of this section; and,

(C) Make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(7)(i) of this section, the seller or telemarketer must:

(A) At a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) Obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(7)(ii)(A) of this section;

(8) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours;

(9) Creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or

(10) Accepting from a customer or donor, directly or indirectly, a cash to cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller

to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with paragraph (b)(1)(iii)(A) of this section, including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;

(iii) Initiating any outbound telephone call to a person when:

(A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the "do not call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer:

(1) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶⁶⁴ of that person; or

⁶⁶⁴ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a

Continued

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(2) Can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is “abandoned” under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in §310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person’s telephone number and signature;⁶⁶⁵ and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by §310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress activated opt out mechanism to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller’s entity specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll free telephone number to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress activated opt out mechanism that:

(1) Automatically adds the number called to the seller’s entity specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate §310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with §310.4(b)(1)(iii)(A), or

valid signature under applicable federal law or state contract law.

⁶⁶⁵ For purposes of this Rule, the term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or § 310.4(b)(1)(iii)(B), employing a version of the "do not call" registry obtained from the Commission no more than thirty one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating paragraph (b)(1)(ii) or (iii) of this section is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to paragraph (b)(1)(iii)(A) of this section not to receive further calls by or on behalf of a seller or charitable organization.

(4) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30

day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁶⁶⁶; and

(iv) The seller or telemarketer, in accordance with § 310.5(b)(d), retains records establishing compliance with § 310.4(b)(4)(i) (iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested

⁶⁶⁶ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the charitable organization on behalf of which the request is being made; and
- (2) That the purpose of the call is to solicit a charitable contribution.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011; 80 FR 77559, Dec. 14, 2015]

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁶⁶⁷
- (4) The name, any fictitious name used, the last known home address and

telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

⁶⁶⁷ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

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(1) The sale of pay per call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," ("Franchise Rule") 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR part 437, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face to face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

(ii) The requirements of § 310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1), for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) for any requested charitable contribution; *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in § 310.3(a)(1)(vi) or § 310.4(a)(2) through (4);

(ii) The requirements of § 310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided*, however, that §§ 310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77559, Dec. 14, 2015]

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to

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the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do

Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$75 for each area code of data accessed, up to a maximum of \$20,740; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$75 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$38 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

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(e) Access to the National Do Not Call Registry is limited to tele marketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013; 79 FR 51478, Aug. 29, 2014; 80 FR 77560, Dec. 14, 2016; 81 FR 59845, Aug. 31, 2016; 82 FR 39534, Aug. 21, 2017; 83 FR 46640, Sept. 14, 2018; 84 FR 44687, Aug. 27, 2019; 85 FR 62597, Oct. 5, 2020; 86 FR 48301, Aug. 30, 2021; 87 FR 53373, Aug. 31, 2022]

§310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

ATTACHMENT B

SUBORDINATION AGREEMENT

This SUBORDINATION AGREEMENT (this “**Agreement**”), executed as of the date(s) indicated below and effective as of the Effective Date (defined below), is made by and between BlueSnap, Inc., a California corporation with its principal place of business at 800 South Street, Suite 640, Waltham, Massachusetts 02453 and BlueSnap Payment Services Ltd, a United Kingdom company with its principal place of business at 2 Sheraton St. Medius House, London, UK W1F 8BH (collectively, the “**Company**”), and the Federal Trade Commission (the “**FTC**”).

WHEREAS, the FTC has filed an action against the Company and others styled *Federal Trade Commission v. BlueSnap, Inc. et al.* in the United States District Court for the Northern District of Georgia asserting claims for violations of the Federal Trade Commission Act and the Telemarketing Sales Rule (the “**Action**”);

WHEREAS, the Company and the FTC are parties to the Stipulated Order for Permanent Injunction, Monetary Judgments, and Other Relief entered as to the Company in the Action (“**Stipulated Final Judgment**”) being entered into for the full and final resolution of all claims asserted against the Company and its co-defendants in the Action;

WHEREAS, the Stipulated Final Judgment imposes a monetary judgment on the Company in the amount of \$10,000,000, with obligations to pay \$5,000,000 to the FTC within 7 days after entry of the Stipulated Final Judgment (the “**Initial Payment**”), and to pay \$5,000,000 to the FTC at a date no later than two years after entry of the Stipulated Final Judgment (the “**Deferred Payment**”);

WHEREAS, the Company has incurred indebtedness and granted liens and security interests to certain lenders and is desirous of borrowing additional funds from certain lenders before the Deferred Payment is due; and

WHEREAS, the execution and delivery of this Agreement is a condition to the Company entering into the Stipulated Final Judgment;

NOW, THEREFORE, in consideration of the foregoing, the Company and the FTC hereby agree as follows:

. **Subordination.** The FTC agrees that, upon receipt by the FTC of the Initial Payment, all remaining amounts (including the Deferred Payment) payable by the Company and its successors and assigns to the FTC pursuant to the Stipulated Final Judgment (the “**Subordinated Judgment Settlement Amount**”), and all of the FTC’s rights, powers, and privileges under the Stipulated Final Judgment, shall be subordinate and junior in right of payment to the Senior Debt (defined below) until the Senior Debt is Paid in Full (defined below). Each holder of the Senior Debt, including the Senior Agent (defined below), shall be a third-party beneficiary of the terms hereof and this Agreement shall be enforceable by each holder of Senior Debt or by the Senior Agent on their behalf.

2. Liens. The FTC and the Company agree that the Subordinated Judgment Settlement Amount is and will remain unsecured by any lien or security interest on the assets of the Company and its Subsidiaries as long as the FTC's remedies remain limited pursuant to Section 5 of this Agreement. Any liens and security interests in favor of the FTC which may exist in breach of the immediately preceding sentence shall be and hereby are subordinated for all purposes and in all respects to the liens and security interests in favor of the holders of the Senior Debt or the Senior Agent on their behalf, regardless of the time, manner, or order of perfection of any such liens or security interests. In the event that the FTC shall at any time have any liens or security interests in respect of the Subordinated Judgment Settlement Amount, each holder of Senior Debt, including the Senior Agent on their behalf, shall be deemed authorized by such holder to file UCC termination statements sufficient to terminate the liens and security interests in favor of the FTC, and the FTC shall promptly execute and deliver to the Senior Agent, upon its request therefore, such releases and terminations as the Senior Agent shall reasonably request to effect the release of such liens and security interests in favor of the FTC.

Liquidation, Winding Up, etc. Upon any distribution of the assets of the Company or upon any dissolution, winding up, liquidation, or reorganization of the Company, whether in any bankruptcy, insolvency, reorganization, or receivership proceeding, or upon any assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise:

(a) the holders of all Senior Debt will be entitled to receive Payment in Full of the Senior Debt before the FTC is entitled to receive payment in the form of cash or property on account of any Subordinated Judgment Settlement Amount, and the holders of Senior Debt will be entitled to receive for application in payment thereof any payment or distribution of any kind or character, whether in cash, property or securities, which may be payable or deliverable in any such proceedings in respect of the Subordinated Judgment Settlement Amount; and

(b) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the FTC would be entitled but for the provisions of this Agreement will be paid by the liquidating trustee or agent or other Person (defined below) making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Debt or their agents, representatives or trustees (including the Senior Agent) under any credit agreement, indenture or similar agreement under which any instruments evidencing any of such Senior Debt may have been issued, according to the relative priorities of the Senior Debt and ratably according to the aggregate amounts remaining unpaid on account of the principal of, interest on and any premium or other amounts payable with respect to the Senior Debt held or represented by each such holder, to the extent necessary to make Payment in Full of all Senior Debt remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of the Senior Debt.

The consolidation of the Company with, or the merger of the Company into, another entity will not be deemed a dissolution, winding up, liquidation or reorganization of the Company for the purposes of this Section 3 if such entity, as a part of such consolidation or merger, succeeds to the Company's property and business and assumes the Company's obligations (including the Senior Debt and the Subordinated Judgment Settlement Amount).

. **Permitted Payments.** The Company may make payments with respect to the Subordinated Judgment Settlement Amount when due, and the FTC may accept or agree to accept such payments at any time. Notwithstanding the foregoing, the Company will not, directly or indirectly, make any payment with respect to the Subordinated Judgment Settlement Amount if (i) any default or event of default under any of the terms of any agreement relating to, or instrument or document evidencing, any Senior Debt, including the Senior Lending Agreements, has occurred and is continuing or would occur as a result of such payment or distribution, or the Company is otherwise prohibited under the terms of any agreement relating to, or instrument or document evidencing, any Senior Debt, including the Senior Lending Agreements, from making such payment, unless such default or event of default has been waived in writing by the holders of Senior Debt, or (ii) any Subsidiary of the Company is prohibited under any of the terms of any agreement relating to, or instrument or document evidencing, any Senior Debt, including the Senior Lending Agreements, from paying cash dividends to the Company for the purpose of making such payment of Subordinated Judgment Settlement Amount. If any payment or distribution of assets on account of Subordinated Judgment Settlement Amount not permitted to be made by the Company pursuant to the immediately preceding sentence is made and received by the FTC and notice is given to the FTC within fifteen (15) business days after such receipt, it shall be promptly paid over to the Senior Agent for application to the payment of the Senior Debt until the Senior Debt is Paid in Full. Nothing in this section shall limit the FTC's rights, remedies or powers to collect any amount due and payable where permitted under Section 5 of this Agreement.

. **Limitations on Remedies.** The FTC will not take any action, or exercise or continue to exercise any rights, remedies or powers under the terms of the Stipulated Final Judgment, or exercise or continue to exercise any other right, remedy or power at law or equity that the FTC might otherwise possess, to collect any amount due and payable in respect of any Subordinated Judgment Settlement Amount, including, without limitation, the commencement of any foreclosure on any lien or security interest, the filing of any petition in bankruptcy with respect to the Company or the taking advantage of any other insolvency law of any jurisdiction with respect to the Company, unless and until the earlier of (1) the date after which two hundred seventy (270) days have passed from the date of the Senior Agent's receipt of a written notice from the FTC that the Company has failed to pay the Subordinated Judgment Settlement Amount to the FTC as of the Deferred Payment Due Date and (2) the date on which the Senior Debt has been Paid in Full. Provided, however, the foregoing shall not in any way limit or impair the right of the FTC to vote a proof of claim as an unsecured creditor in respect of the Subordinated Judgment Settlement Amount in connection with any bankruptcy or other insolvency or liquidation proceeding. For the avoidance of doubt, nothing in this Agreement shall limit the FTC's rights, remedies, or powers to enforce the nonmonetary provisions of the Stipulated Final Judgment.

. **Amendments.** Until the Senior Debt has been Paid in Full, any amendment or modification of this Agreement will not be effective against any Person who was a holder of Senior Debt prior to or at the time of such amendment or modification unless such holder of Senior Debt consents in writing to such amendment or modification, which consent may be withheld for any reason or no reason at all.

. **Treatment of Senior Debt.** The holders of Senior Debt may, at any time, in their discretion, renew, amend, extend or otherwise modify the terms and provisions of the Senior Debt (or any instrument evidencing or creating the same) so held or exercise any of their rights under the Senior Debt, including, without limitation, the waiver of defaults thereunder and the amendment of any of the terms or provisions thereof (or any notice evidencing or creating the same), all without notice to or assent from the FTC. No compromise, alteration, amendment, renewal or other change of, or waiver, consent or other action in respect of any liability or obligation under or in respect of, any terms, covenants or conditions of the Senior Debt (or any instrument evidencing or creating the same), whether or not such release is in accordance with the provisions of the Senior Debt (or any instrument evidencing or creating the same), will in any way alter or affect any of the subordination provisions of this Agreement, except that the Company agrees that any treatment of the Senior Debt as described herein shall not affect the limits on the total amount of debt that may constitute Senior Debt as provided in the definition below or the Company's obligation to pay the Deferred Payment at the Deferred Payment Due Date. The Senior Debt will continue to be treated as Senior Debt and the provisions of this Agreement will continue to cover the relative rights and priorities of the holders of Senior Debt and the FTC even if all or part of the Senior Debt or the security interests securing the Senior Debt are subordinated, set aside, avoided or disallowed in connection with any such proceeding or otherwise and this Agreement will be reinstated if at any time any payment of any of the Senior Debt is rescinded or must otherwise be returned by any holder of Senior Debt or any representative of such holder. The FTC, in its capacity as a creditor, covenants and agrees that it will not, and will not encourage any other individual or entity to, at any time, contest the validity, perfection, priority or enforceability of any Senior Debt or any security interests or liens granted to secure the Senior Debt. If, at any time, all or part of any payment with respect to Senior Debt theretofore made by the Company or any other Person is rescinded or must otherwise be returned by the holders of Senior Debt for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Company or such other Persons), the subordination provisions set forth herein shall continue to be effective or be reinstated, as the case may be, all as though such payment had not been made.

. **Binding Effect.** The provisions of this Agreement and the defined terms contained herein shall be binding upon the successors and assigns of the Company and the FTC and will inure to the benefit of the holders of the Senior Debt and their successors and assigns. Each holder of Senior Debt, whether now outstanding or hereafter created, incurred, assumed or guaranteed will be deemed to have advanced or acquired such Senior Debt in reliance on such provisions and defined terms.

. **Definitions.**

“**Deferred Payment Due Date**” means the date on which the Deferred Payment is due under the terms of the Stipulated Final Judgment, which is defined as the earlier of: (a) two years after the Effective Date or (b) thirty (30) days after the closing of a Sale of the Corporate Defendants (as defined in the Stipulated Final Judgment).

“**Effective Date**” means the date of entry of the Stipulated Final Judgment by a United States District Court.

“**Paid in Full**” or “**Payment in Full**” means with respect to the Senior Debt that (i) the principal, interest, fees, expenses, indemnification obligations and other non-contingent obligations constituting Senior Debt have been paid in full in cash, (ii) all hedging arrangements and letters of credit have been terminated, cash collateralized or backed by a letter of credit satisfactory to the counter-parties or issuers thereof and (iii) all commitments to advance credit thereunder have been terminated.

“**Person**” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or governmental entity (whether federal, state, county, city or otherwise and including, without limitation, any instrumentality, division, agency or department thereof).

“**Senior Debt**” means, without duplication, all obligations of any kind owed by the Company, its Subsidiaries, or any other Persons whose assets are liable for all or any portion of any Senior Debt from time to time under or pursuant to the Senior Lending Agreements, including without limitation all principal, interest accruing thereon, charges, expenses, fees and other sums chargeable by the holders of Senior Debt, and reimbursement, indemnity or other obligations due and payable to the holders of Senior Debt, whether accruing before or after the commencement of a bankruptcy proceeding and regardless of whether payment thereof is allowed in such proceeding. Senior Debt shall also include any indebtedness of the Company, its Subsidiaries, or any other Persons whose assets are liable for all or any portion of any Senior Debt incurred in connection with a refinancing of the Senior Debt under the Senior Lending Agreements if the terms and conditions of the agreements, documents, and instruments related to such refinancing, taken as a whole, are not materially more onerous to the FTC than those set forth in the Senior Lending Agreements. Notwithstanding the foregoing, the total amount of debt that may constitute Senior Debt shall be limited to an aggregate principal amount equal to \$85,000,000 representing the principal amount outstanding (or available to be drawn under unused commitments) under the Senior Lending Agreements in effect as of the Effective Date plus an additional principal amount equal to \$23,000,000.

“**Senior Lending Agreements**” means that certain Credit Agreement, dated as of October 25, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified, extended, refinanced or replaced from time to time, the “**Credit Agreement**”), by and among Fremont Holdco, Inc., a Delaware corporation, the Company, the guarantors from time to time party thereto, the lenders from time to time party thereto, and Sixth Street Specialty Lending, Inc. (formerly known as TPG Specialty Lending, Inc.), a Delaware corporation, as the Administrative Agent and the Collateral Agent thereunder (the “**Senior Agent**”), and all Loan Documents (as defined in the Credit Agreement) entered into pursuant thereto and any Specified Cash Management Agreement (as defined in the Credit Agreement) or any Specified Swap Agreement (as defined in the Credit Agreement) entered into in connection therewith; and any additional agreements to incur indebtedness or borrowed money for the Company or its Subsidiaries that become effective before the Deferred Payment Due Date, provided that the amount of principal indebtedness that may incurred under such additional agreements does not exceed \$23,000,000.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares

of stock entitled (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a partnership, association or other business entity, a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof.

10. Notice.

Unless otherwise directed by a representative of the FTC in writing, all notices to the FTC pursuant to this Agreement must be in writing and emailed to all of the following addresses: mburgess1@ftc.gov; abakowski@ftc.gov; nrice@ftc.gov; DEbrief@ftc.gov. The subject line must begin: FTC v. BlueSnap, Inc., Matter No. 2223008.

Unless otherwise directed by the Senior Agent in writing, all notices to the Senior Agent pursuant to this Agreement shall be in writing and delivered to:

Sixth Street Specialty Lending, Inc.,
2100 McKinney Avenue, Suite 1500
Dallas, TX 75201
Attention: Legal and Compliance Department
Email: SLXAccounting@sixthstreet.com

with a copy to (which shall not constitute notice):

Paul Hastings LLP
200 Park Avenue
New York, NY 10166
Attention: Jennifer St. John Yount
Facsimile: (212) 303-7008; email: jenniferyount@paulhastings.com

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date(s) listed below:

BlueSnap, Inc. and BlueSnap Payment Services Ltd

By: *Daniel Woodruff*
Name: Daniel Woodruff
Title: General Counsel
Date: March 15, 2024

Federal Trade Commission

By: *Alan Bakowski*
Name: ALAN BAKOWSKI
Title: ATTORNEY
Date: 5/1/2024