VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT 2014 SEP -8 A 10:22

In re MERCHANT PROCESSING SOLUTIONS, LLC, d/b/a PAYMENT SYSTEMS and PAYMENT SYSTEMS CORP. AGENCY, LLC	)))))	FILED CIVIL DIVISION Docket No. _____

ASSURANCE OF DISCONTINUANCE

INTRODUCTION

1. Merchant Processing Solutions, LLC, d/b/a Payment Systems and Payment Systems Corp. ("Payment Systems"), is a California limited liability corporation with offices located at 515 South Flower Street, Suite 1200, Los Angeles, California 90071.

2. Payment Systems made telephone calls to some of its prospective business-clients in Vermont to schedule in-person sales presentations of credit and debit card processing services and related leases of processing equipment.

3. Sales representatives of Payment Systems visited the prospective businesses, made face-to-face sales presentations and negotiated merchant processing agreements and equipment leases at the business locations.

4. Businesses that entered into processing agreements and equipment leases were subject to a number of possible fees for leased equipment and payment processing, including fees for documentation, monthly statement, use of wireless connections, inactivity, security standards compliance and federal regulatory reporting.

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5. Under the written terms of merchant processing agreements negotiated by Payment Systems and signed by its clients, the Vermont businesses have paid a 2.79 percent surcharge of the amount of each credit card charge, above the normal 1.00 percent rate, where the transaction is "non-qualified"—for example, when rewards-type credit cards are used.

6. In addition, the merchant processing agreements and equipment leases include accelerated payment provisions or early termination fees.

7. Since 2010, Payment Systems has negotiated merchant processing agreements and related equipment leases with 20 Vermont businesses (three of them with two separate locations each).

8. According to Payment Systems, since 2010, these businesses together have paid, under their merchant processing agreements at least $114,670.90 more than the total of the 1 percent basic processing fee for credit cards.

9. A Payment Systems telemarketing script that may have been used to set up at least some of the sales appointments with Vermont businesses contained a number of statements concerning the advantages of obtaining credit card processing and equipment through Payment Systems, including statements to the effect that:

a. The businesses would save money ($500, or as much as 35 percent) on their processing fees;

b. The businesses would receive processing rates similar to companies like Home Depot, Wal-Mart, and Starbucks;

c. Payment Systems' clients included well-known companies like Pizza Hut, Shell, Home Depot; and

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d. "For today only," businesses could have their processing, set-up, and application fees waived.

10. In fact:

a. The claimed savings hinged in large part on whether the businesses accepted or declined "non-qualified" credit card transactions;

b. The large corporations referred to as Payment Systems' clients were clients of First Data Merchant Services Corporation, whose services Payment Systems sold as an independent sales organization; and

c. The fee waivers offered "[f]or today only" were always applied.

11. The Vermont Consumer Protection Act ("CPA") requires any person who makes an "offer for sale or lease, of goods or services ... personally solicited or consummated" at the prospective customer's place of business, or "solicited or consummated in whole or in part by telephone," 9 V.S.A. §§ 2451a(d) and 2451a(d)(7), to disclose and provide a three-business-day right to cancel, orally, and when any contract is signed, in writing in a prescribed manner. 9 V.S.A. § 2454 and Vermont Consumer Protection Rule (CP) 113, http://www.atg.state.vt.us/assets/files/CP%20113.pdf.

12. Payment Systems did not disclose a right to cancel in its initial calls to Vermont businesses or in its merchant processing agreements.

13. Vermont law requires telephone solicitors to register with the Vermont Secretary of State; failure to register is a violation of the CPA, 9 V.S.A. 9 V.S.A. §§ 2464b, 2464a(c).

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14. For purposes of this registration requirement, a telephone solicitation is a "solicitation by telephone of a customer for the purpose of encouraging the customer ... to purchase, lease or otherwise agree to pay consideration for ... goods or services." 9 V.S.A. § 2464a(a)(6)(A).

15. Payment Systems did not register with the Vermont Secretary of State.

16. Vermont Consumer Protection Rule (CP) 109.02 provides:

> It shall constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a) for any person to represent that any other person is a "winner" or has been "selected" or is otherwise being included in a select group for receipt of a prize or an opportunity or that a person is entering a "contest," "sweepstakes," "drawing," or other competitive enterprise from which a winner or select group of winners will receive a prize or opportunity when, in fact, the enterprise is a promotional scheme designed to make contact with prospective customers and all or a substantial number of those "entering" receive the same "prize" or "opportunity."

http://www.atg.state.vt.us/assets/files/CP%20109.pdf (italics added).

17. The Vermont Attorney General alleges that Payment Systems violated the CPA, 9 V.S.A. § 2453(a), by using deceptive representations in its telemarketing of Vermont businesses, failing to provide proper notice of the three-day right to cancel, failing to register as a telephone solicitor with the Secretary of State, and representing that Vermont businesses had been specially selected to have fees waived when in fact the representation was promotional in nature and all of those contacted received the same waiver.

18. The estimated financial exposure to Payment Systems related to equipment lease terminations is approximately $135,000.

19. Payment Systems denies any liability and denies that it violated Vermont law.

20. The Vermont Attorney General is willing to accept this Assurance of Discontinuance under 9 V.S.A. § 2459.

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INJUNCTIVE RELIEF

21. Payment Systems shall comply strictly with all provisions of Vermont law, including but not limited to the CPA's prohibition on unfair and deceptive acts and practices in commerce and its requirements relating to the three-day right to cancel, and CP 109.02's prohibition on representations of special selection.

22. Payment Systems shall not make any savings claims to Vermont consumers (including businesses) unless those are calculated with reference to the fees to be charged for all credit cards, and not just "qualified" credit cards.

23. In communications with Vermont businesses, Payment Systems shall not refer to other companies as its clients unless those companies actually have a direct client relationship with Payment Systems.

24. Payment Systems shall also register with the Vermont Secretary of State before making telephone calls of a commercial nature to any person in the State of Vermont.

PAYMENTS TO VERMONT BUSINESSES

25. No later than October 1, 2014, Payment Systems shall deliver via overnight delivery, valid checks payable to each business in the State of Vermont that paid any money to Payment Systems, such check to be in the amount of all monies paid by the business in excess of the total of (a) all processing fees in excess of 1 (one) percent on credit card charges to date, and (b) the contracted-for basic monthly equipment lease fees through the last month in which the business used the equipment or paid the fee. Each such check shall include the amount of any termination fees paid by the business, if any, under a merchant processing agreement or equipment lease.

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26. Within 10 (ten) days of delivering such checks, Payment Systems shall provide the Vermont Attorney General with proof of delivery for each business, as well as the amount of the check provided.

27. The total of all of the checks described in paragraph 25, above, is estimated to be at least $114,670.90. If the amount is lower than that, then the payment to the State of Vermont under paragraph 30, below, shall be increased by the difference between that amount and the actual amount paid.

28. Payment Systems may require the provision of a reasonable release of claims as a precondition to the payment under paragraph 25, above, provided that the release form has been approved in advance by the Vermont Attorney General's Office. Negotiation of a provided check by a business may serve as execution of the release.

29. Payment Systems shall provide a cover letter from it to each business which shall accompany each check. The form of such letter shall be substantially similar to the form of letter attached hereto as Exhibit 1.

30. No later than January 2, 2015, Payment Systems shall pay to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, by bank or cashier's check payable to the Vermont State Treasurer, or by electronic money transfer to a State-designated account, in the total dollar amount of all checks described in paragraph 25, above, that were returned as undeliverable as of said date, to be treated as unclaimed property under state law. Payment Systems shall also provide to the State an electronic Excel file containing the names of the businesses whose checks were returned or went undeposited and uncashed, and for each such business, the address, telephone number, and dollar amount of the check. Payment Systems shall also stop payment on all checks

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described in paragraph 25, above, that were returned as undeliverable or that went undeposited and uncashed as of said date.

31. Until November 1, 2014, any Vermont business that has entered into a merchant processing agreement and/or equipment lease with, or through negotiation with, Payment Systems (including leases with Global Leasing Company and leases subsequently sold to a third party) shall be entitled to renegotiate or terminate said agreement and lease without any termination fee or other penalty by so notifying Payment Systems in writing, by letter to Payment Systems, Legal Department, 515 South Flower Street, Suite 1200, Los Angeles, California 90071, or by email to Legal@paymentsystemscorp.com. Payment Systems shall take all necessary steps to ensure this renegotiation or termination right, and shall hold the renegotiating or terminating Vermont business harmless from any claim by a third party arising from or relating to a termination of a merchant processing agreement and/or equipment lease with, or through negotiation with, Payment Systems, and shall reimburse the cost to the Vermont business of defending against such a claim. In the event that the State of Vermont takes legal action to protect a Vermont business from such a claim by a third party, Payment Systems shall cooperate with the State in that enforcement effort.

32. In addition to the reimbursement provided for in paragraph 25, above, no later than December 1, 2014, Payment Systems shall reimburse any Vermont business that has entered into a merchant processing agreement and/or equipment lease with, or through negotiation with, Payment Systems and which, on or before November 1, 2014, terminates or renegotiates such agreement or lease, an amount equal to the total paid by the business in the month of October 2014 that exceeded: (a) processing fees of 1 (one) percent for all credit and non-PIN debit (including AMEX and Discover) card charges, and 0 (zero)

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percent for all PIN debit card charges, and (b) the basic monthly equipment fee provided for in the lease. Payment Systems shall take all steps necessary to ensure that no action is taken by any third party to collect any amount in excess of said charges and fees for the month of October 2014. Effective November 2, 2014, Payment Systems may charge, on a going-forward basis, any Vermont business that has not terminated or renegotiated, prior to that date, its merchant processing agreement and/or equipment lease all fees provided for in the non-terminated agreement/equipment lease.

PAYMENT TO THE STATE

33. Payment Systems shall pay to the State of Vermont the sum of $100,000.00 (one hundred thousand dollars) by bank or cashier's checks sent to the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609, or by electronic money transfers to a State-designated account, in ten equal installments of $10,000.00 (ten thousand dollars) each no later than the 15th day of each successive month starting September 15, 2014, and ending June 15, 2015. Payment Systems shall further provide to the Vermont Attorney General's Office a letter of credit sufficient to secure these payments in full and in a form acceptable to that Office no later than September 15, 2014.

OTHER PROVISIONS

34. This Assurance of Discontinuance represents a full and final settlement of any and all claims by the State of Vermont or any of its subdivisions or agencies that relate to the subject matter of this Assurance of Discontinuance.

35. This Assurance of Discontinuance may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

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36. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 9/4/14

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Assistant Attorney General

Dated _____

MERCHANT PROCESSING SOLUTIONS, LLC,
d/b/a PAYMENT SYSTEMS and PAYMENT
SYSTEMS CORP.

By: _____
Its Authorized Agent

APPROVED AS TO FORM:

_____
Elliot Burg
Senior Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
For the State of Vermont

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_____
Michael A. Thurman, Esq.
Thurman Legal
1055 E. Colorado Blvd., 5th Floor
Pasadena, CA 91106
For Merchant Processing Solutions, LLC,
d/b/a Payment Systems and Payment Systems Corp.

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Dated 9/4/14

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: _____
Elliot Burg
Assistant Attorney General

Dated 9/4/14

MERCHANT PROCESSING SOLUTIONS, LLC,
d/b/a PAYMENT SYSTEMS and PAYMENT
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By: _____
Its Authorized Agent

APPROVED AS TO FORM:

_____
Elliot Burg
Senior Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
For the State of Vermont

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Michael A. Thurman, Esq.
Thurman Legal
1055 E. Colorado Blvd., 5th Floor
Pasadena, CA 91106
For Merchant Processing Solutions, LLC,
d/b/a Payment Systems and Payment Systems Corp.

Exhibit 1

IMPORTANT INFORMATION ABOUT YOUR MERCHANT PROCESSING ACCOUNT. PLEASE READ CAREFULLY AND COMPLETELY.

Dear _____:

It is with our apologies that we write to you.

Recently, we were contacted by the Vermont Attorney General's office about complaints that some of our Vermont customers made regarding our company. Based on these complaints, the Vermont Attorney General's office conducted an investigation with our cooperation. As a result of this investigation, we have entered into an Assurance of Discontinuance with the Vermont Attorney General, the purpose of which is to ensure that our Vermont customers have a complete understanding of their agreements and fees related to processing and equipment leases, and to compensate you for any possible past misunderstandings.

Check: As part of the agreement, we are enclosing a check in the amount of _____, to reimburse you for the total of (1) any amounts you paid for credit card processing above 1%, and (2) any equipment lease fees you paid in excess of the amount of your regular monthly lease charge (including any lease termination fees). **This check will expire and be cancelled if you do not negotiate it by January 1, 2015.**

Release: By cashing this check, you are releasing Payment Systems and its employees, officers, directors, owners, shareholders, members, agents, representatives, successors and assigns from all claims, known and unknown, that you have or had arising from or relating to the processing and equipment lease agreements that you have with or acquired through Payment Systems, as well any marketing or sales presentations that preceded such agreements.

Termination or Modification of Agreements: Under our agreement with the Vermont Attorney General, you have the right to terminate your processing and equipment lease agreements without penalty by simply informing us in writing **no later than November 1, 2014**, that you wish to terminate. You can do this by writing to Payment Systems, Legal Department, 515 S. Flower St., Suite 1200, Los Angeles, CA 90071, or by emailing us at Legal@paymentsystemscorp.com.

Alternatively, as a valued customer, and based on our desire to maintain your business, we would like to offer you a modified processing and equipment lease agreement. We are offering you a 50% reduction on your monthly equipment lease payment for the remainder of your lease term and a reduction on your downgrade surcharge for *non-qualified credit and debit card transactions* from 2.79% to 0.79%. Non-qualified credit cards include primarily rewards-type cards.

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Note that this downgrade surcharge is charged on top of the ordinary 1.0% applicable to all credit card and signature-based debit card transactions (your rate for PIN-based debit card transactions would remain at 0%).

By November 1, 2014, please let us know whether you intend to terminate your processing and/or lease agreement or if you want to maintain our relationship under the terms of the modified agreements we have enclosed. If you decide to terminate your lease agreement, you must immediately return the leased equipment, as required by the terms of the lease agreement. Please know that if you take no action on or before November 1, 2014, the terms of the existing processing agreement and equipment lease will remain in full force and effect.

Inquiries: Should you have any questions about any of this, please feel free to contact us at Payment Systems, c/o Legal Department, 515 South Flower Street, Suite 1200, Los Angeles, California 90071, or by email to Legal@paymentsystemscorp.com, or you may contact the Vermont Attorney General's Office, c/o Elliot Burg, at (802) 828-5507.

Thank you for your prompt attention to this matter.

Sincerely.

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