

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE
COMMISSION, et al.,

Plaintiffs,

v.

CASE NO. 8:15-cv-1417-T-23AEP

E.M. SYSTEMS
& SERVICES, LLC., et al.,

Defendants.

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ORDER

The Federal Trade Commission and the Florida Attorney General sue (Doc. 58) sixteen defendants under the Florida Deceptive and Unfair Trade Practices Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, and Sections 13(b) and 19 of the FTC Act. The plaintiffs and the CardReady defendants stipulate to the injunctive and monetary relief in this order.¹

DEFINITIONS

A. “ACH Debit” means any attempted or completed debit to a person’s account at a financial institution that is processed electronically through the Automated Clearing House Network.

B. “Acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that has

¹ CardReady, LLC, Brandon A. Becker, and James F. Berland comprise the CardReady defendants.

authority from an organization that operates or licenses a credit card system (e.g., Visa, MasterCard, American Express, and Discover) to authorize a merchant to accept, to transmit, or to process a payment by credit card through the credit card system for money, goods or services, or another valuable item.

C. “CardReady defendants” means the individual defendants and the corporate defendants, individually or in combination.

D. “Chargeback” means a procedure in which an issuing bank or other financial institution charges all or part of a person’s credit or debit card transaction back to the acquiring or merchant bank.

E. “Client” means a person who obtains directly or indirectly from a CardReady defendant a merchant account or a person for whom a CardReady defendant acts directly or indirectly as a sales agent.

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

G. “Credit card laundering” means:

1. Presenting or depositing into, or causing another to present or to deposit into, the credit card system for payment a Credit Card Sales Draft if the underlying transaction is not between the cardholder and the merchant;

2. Employing, soliciting, or allowing a merchant, or an employee, representative, or agent of a merchant, to present or to deposit into the credit card system for payment a Credit Card Sales Draft if the underlying transaction is not between the cardholder and the merchant;

3. Obtaining access to the credit card system through a business relation with a merchant when the access is not authorized by the merchant account or by the applicable credit card system.

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

I. “Debit Relief Product or Service” means any product, service, or plan represented to re-negotiate, to settle, or to alter a term of payment or

another term of the debt between a person and an unsecured creditor or debt collector, including a reduction in balance, interest rate, or fee.

J. “Independent sales organization” (“ISO”) means a person who enters into an agreement with a Payment Processor to sell or to market payment processing services to a merchant and who holds full or partial liability for a loss related to the payment processing activities conducted by or on behalf of the merchant.

K. “Individual defendants” means Brandon A. Becker and James F. Berland.

L. “Lending Marketplace Platform for Low-Risk Merchants” means an online marketplace and processing platform that connects a low-risk merchant with a prospective lender. “Low-risk merchant” excludes any merchant engaged in outbound telemarketing or offering a money-making opportunity; listed by MasterCard Member Alert to Control High-Risk Merchants (MATCH) because of excessive chargebacks, fraud, merchant collusion, illegal transactions, identity theft, or identification as a Questionable Merchant under the MasterCard Questionable Merchant Audit Program; and registered by MasterCard or Visa as a high-risk merchant.

M. “Merchant” means a person who may, under a written contract with an Acquirer, honor or accept a credit card, or transmit or process a credit card payment, for the purchase of a good, service, or charitable contribution.

N. “Merchant account” means an account with an Acquirer that authorizes a merchant to honor or to accept a credit card, or to transmit or process for payment a credit card, for the purchase of a good, service, or charitable contribution.

O. “Payment processing” means providing a person with the means to charge or to debit an account through a payment mechanism, including a Remotely Created Payment Order, an ACH Debit, or a debit, credit, prepaid, or stored value card. Payment processing includes reviewing and approving a merchant application for payment processing services; providing the means to transmit sales transaction data from a merchant to an acquiring bank or to another financial institution; clearing, settling, or distributing a proceed of a transaction from an acquiring bank or from a financial institution to a merchant; or processing a

chargeback or returned Remotely Created Payment Order or ACH Debit.

P. “Payment processor” means a person providing payment processing services in connection with a charitable contribution or in connection with another person’s sale of a good or service.

Q. “Person” means an individual, group, unincorporated association, limited or general partnership, corporation, or entity.

R. “Sales agent” means a person who matches, arranges, or refers a prospective client to a payment processor or ISO for payment processing but holds no contractual liability for a loss related to a payment processing activity conducted by or on behalf of a client. A sales agent may recommend a particular payment processor or ISO to a prospective client, may forward to the payment process or ISO a prospective client’s merchant application, and may negotiate the fee charged by a payment processor or ISO, but a sales agent may not act as an ISO.

I. Ban on credit card laundering

The CardReady defendants, and an officer, agent, employee, or attorney of a CardReady defendant, must not launder a credit card.

II. Ban on payment processing or acting as an ISO or sales agent

The CardReady defendants, and an officer, agent, employee or attorney of a CardReady defendant, must not engage in payment processing and must not act as a merchant’s ISO or sales agent.

III. Ban on facilitating fraudulent payment processing

The CardReady defendants, and an officer, agent, employee or attorney of a CardReady defendant, must not assist a person whom the CardReady defendant knows is:

1. Misrepresenting a fact so as to obtain Payment Processing services;
2. Misrepresenting a material fact about a product's performance, efficacy, or nature;
3. Misrepresenting a material term of a refund, cancellation, exchange, or re-purchase policy;
4. Debiting or charging a consumer's account without authorization;
5. Attempting to avoid detection of a fraud or risk monitoring program through any tactic, including balancing or distributing sales transaction volume, splitting a single transaction into smaller transactions, or using a shell company to apply for a merchant account.

IV. Monetary relief

The clerk is directed to enter a judgment in the amount of \$12,365,731 for the Federal Trade Commission and the Office of the Attorney General, State of Florida, Department of Legal Affairs, and against the CardReady defendants jointly and severally.

Within fourteen days of entry of this order and in accord with instructions from the FTC, the CardReady defendants must pay the plaintiffs \$1,800,000. Payment of the \$1,800,000 will suspend the remainder of the judgment as explained below.

The plaintiffs agree to the partial suspension of the judgment against the CardReady defendants only if the financial representations in the following documents are truthful, accurate, and complete:

1. The April 12, 2016 financial statement of Brandon A. Becker and attachments to the statement;

2. The December 7, 2015 financial statement of James F. Berland and attachments to the statement;
3. The April 12, 2016 corporate financial statement of CardReady, LLC, and attachments to the statement;
4. The April 22, 2016 letter from the CardReady defendants' counsel, Edward A. Marshall to the FTC's counsel, and the April 21, 2016 letter from CPA Jonathan P. Reuben to James F. Berland;
5. The May 2, 2016 letter from Edward A. Marshall to the FTC's counsel;
6. The May 11, 2016 letter from Edward A. Marshall to the FTC's counsel and attachments to the letter; and
7. The June 20, 2016 letter from Edward A. Marshall to the FTC's counsel and attachments to the letter.

If an order finds that a CardReady defendant materially misstated, or failed to disclose, either a material asset or an asset's value, the order will re-instate the judgment.

If re-instated as to a CardReady defendant, the judgment is due immediately as to that defendant. For this section only, the parties stipulate that the judgment amount represents the alleged consumer injury plus post-judgment interest less a payment ordered in this section.

In any civil litigation by or on behalf of the plaintiffs, including a proceeding to enforce the judgment and a non-dischargeability claim in a bankruptcy action, the CardReady defendants may not dispute the truth of the complaint's factual allegations.

The CardReady defendants permit the use, in accord with 31 U.S.C. § 7701, of a Taxpayer Identification Number, i.e., a Social Security Number or Employer Identification Number, for the collection and the reporting of a delinquent amount of the judgment.

The plaintiffs may deposit money paid in satisfaction of the judgment into a fund administered by the FTC or its designee and used for equitable relief, including consumer redress and the expenses of administering the redress program. If redress is impracticable or if money remains after completion of the redress program, the plaintiffs may use the money for other equitable relief, i.e., a consumer information remedy, that is reasonably related to the CardReady defendants' allegedly deceptive practices. The plaintiffs may divide equally any money not used for consumer redress or for equitable relief. The FTC must deposit its half in the U.S. Treasury and the Florida Attorney General must deposit its half in the Florida Attorney General Department of Legal Affairs' Revolving Trust Fund.

V. Customer information

For information obtained (before entry of this order) by a CardReady defendant in connection with payment processing services provided to Steven Short or E.M. Systems, the CardReady defendant, and an officer, agent, employee, or attorney of the CardReady defendant must not disclose or use customer information, which includes a name, address, telephone number, e-mail address, Social Security number, or any data that permits access to a customer's credit card, bank, or other

financial account. And, if directed in writing by a plaintiff, a CardReady defendant must destroy any of the above information within thirty days of receipt of the directive. But a defendant need not destroy, and may disclose, customer information if required by law to preserve or to disclose the information.

VI. Cooperation

The CardReady defendants must cooperate fully with the plaintiffs in this action and in any investigation related to this action. The CardReady defendants must provide truthful and complete information, evidence, and testimony, and must appear (and must direct an officer, employee, representative, or agent of a CardReady defendant to appear) for an interview, hearing, discovery, trial, or another proceeding if the plaintiff provides at least five days' written notice and if the subject of the proceeding relates to the allegations in this action. If appropriate, a CardReady individual may invoke the Fifth Amendment privilege against self-incrimination.

VII. Acknowledgment

Within seven days of receiving this order, each CardReady defendant must submit to the plaintiffs a sworn acknowledgment that the defendant received the order.

For ten years after entry of this order, each CardReady individual, for any business that he owns individually or collectively with another CardReady defendant and for which business the defendant owns or controls a majority share, must deliver

this order to the business's principals, officers, directors, and LLC managers and members, to all employees, agents, and representatives who participate in conduct related to the subject of this action; and to any business entity resulting from a change in structure (as explained in the compliance reporting section of this order). For current personnel, the defendant must deliver this order within seven days of the order's entry. For all others, the defendant must deliver this order before assuming responsibility. For each person described above, the defendant must obtain within thirty days of delivery a signed and dated acknowledgment by the person that he received this order.

VIII. Compliance reporting

A year after entry of this order, each CardReady defendant must submit a sworn compliance report which includes:

1. The defendant's telephone number and primary physical, postal, and e-mail address.
2. For the CardReady corporation, a designated contact;
3. A list of the defendant's businesses and the names, telephone numbers, and physical, postal, e-mail, and Internet addresses of the business;
4. For each business listed in accord with the instruction above, a description of the business's activity, including the good or service offered; the means of advertising, marketing, and sales; and a list of every other CardReady defendant involved with the business.
5. A detailed explanation whether and why the defendant is compliant with this order.

Also, each CardReady individual must identify all of the individual's telephone numbers and physical, postal, e-mail, and Internet addresses; identify all business activities; and describe in detail the individual's involvement in the business, including the individual's title, role, responsibilities, and ownership interest.

For twenty years after entry of this order, each CardReady defendant must submit a sworn compliance notice within fourteen days of any change in:

1. The designated contact;
2. The structure of a CardReady LLC or an entity in which a CardReady defendant has or acquires an interest, including a merger, sale, incorporation, dissolution, or any of the preceding that involves a parent, subsidiary, or affiliate engaged in any act that is the subject of this action.
3. For a CardReady individual, the individual's name (including an alias) or residence; and the role in any business activity or the individual's title in any business.

Each defendant must notify plaintiffs about the filing of a bankruptcy petition or an insolvency proceeding by or against the defendant within fourteen days of the petition's filing.

Unless a plaintiff requests differently, a defendant must submit a document or statement required by this order to the FTC at Debrief@ftc.gov with subject line "FTC v. E.M. Systems, et al., the CardReady defendants." Or the defendant may submit the document by overnight courier to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, D.C., 20580. Also, the defendant must submit the document or

statement to the Florida Attorney General at cpenforcement@myfloridalegal.com or mail the document to the Office of the Attorney General, Director of Consumer Protection Division, 3507 East Frontage Road #325, Tampa, Florida 33607.

Any sworn statement to the plaintiffs must comply with 28 U.S.C. § 1746.

IX. Recordkeeping

For a business owned or controlled in majority share by a CardReady defendant, the defendant must create the following documents for twenty years after entry of this order:

1. An account record that shows the revenue from all goods and services sold;
2. A personnel record that shows each employee or contractor's name, address, telephone number, job title, dates of service, and if applicable the reason for termination;
3. A record of every consumer complaint and refund request received by the defendant and the defendant's response; and
4. Any record necessary to demonstrate compliance with this order.

X. Compliance monitoring

Within fourteen days of a written request from a plaintiff, a CardReady defendant must submit a sworn compliance report or other information requested by the plaintiff and must produce a requested document. Without requesting leave of court, a plaintiff may obtain discovery under Rules 29, 30, 31, 33, 34, 36, 45, and 69, Federal Rules of Civil Procedure, if the discovery request relates to this order or to

the complaint in this action. Also, the FTC may invoke compulsory process under Sections 9 and 20 of the FTC Act.

The CardReady defendants must permit a representative of a plaintiff to interview any employee or another individual affiliated with a CardReady defendant if the person agrees to the interview. The person's counsel may appear at the interview.

XI. Jurisdiction retained

Jurisdiction is retained to enforce this order.

ORDERED in Tampa, Florida, on January 17, 2017.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE