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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Federal Trade Commission,

Plaintiff,

v.

Electronic Payment Solutions of America
Incorporated, et al.,

Defendants.

No. CV-17-02535-PHX-SMM

ORDER

Summary Judgment Against Defendants Electronic Payment Systems LLC, Electronic Payment Transfer LLC, John Dorsey, and Thomas McCann (Doc. 322); Defendants Strike (Doc. 340); Electronic Payment Systems LLC and Electronic Payment Transfer

Reconsideration of Order on Motion for Judgment on the Pleadings (Doc. 351). The motions have been fully briefed and are ripe for review.

1 contends helped MNF in its credit card laundering efforts.

2 Electronic Payment Systems LLC, Electronic Payment Transfer LLC, John Dorsey,
3 and Thomas McCann are the sole remaining defendants in this matter.³ Electronic Payment
4 Systems LLC and Electronic Payment Transfer LLC share the same office space and are

5
6 Doc. 329 at 2; Doc. 331 at 5.) They are closely
7 affiliated with each other and often referred to interchangeably as the same company. (Doc.
8 317 at 10; Doc. 329 at 2; Doc. 331 at 5.) Electronic Payment Transfer LLC uses the d/b/a
9 names Electronic Payment Systems and EPS. (Doc. 317 at 10; Doc. 329 at 2; Doc. 331 at
10 5.) Therefore, the Court will consider Electronic Payments Systems LLC and Electronic

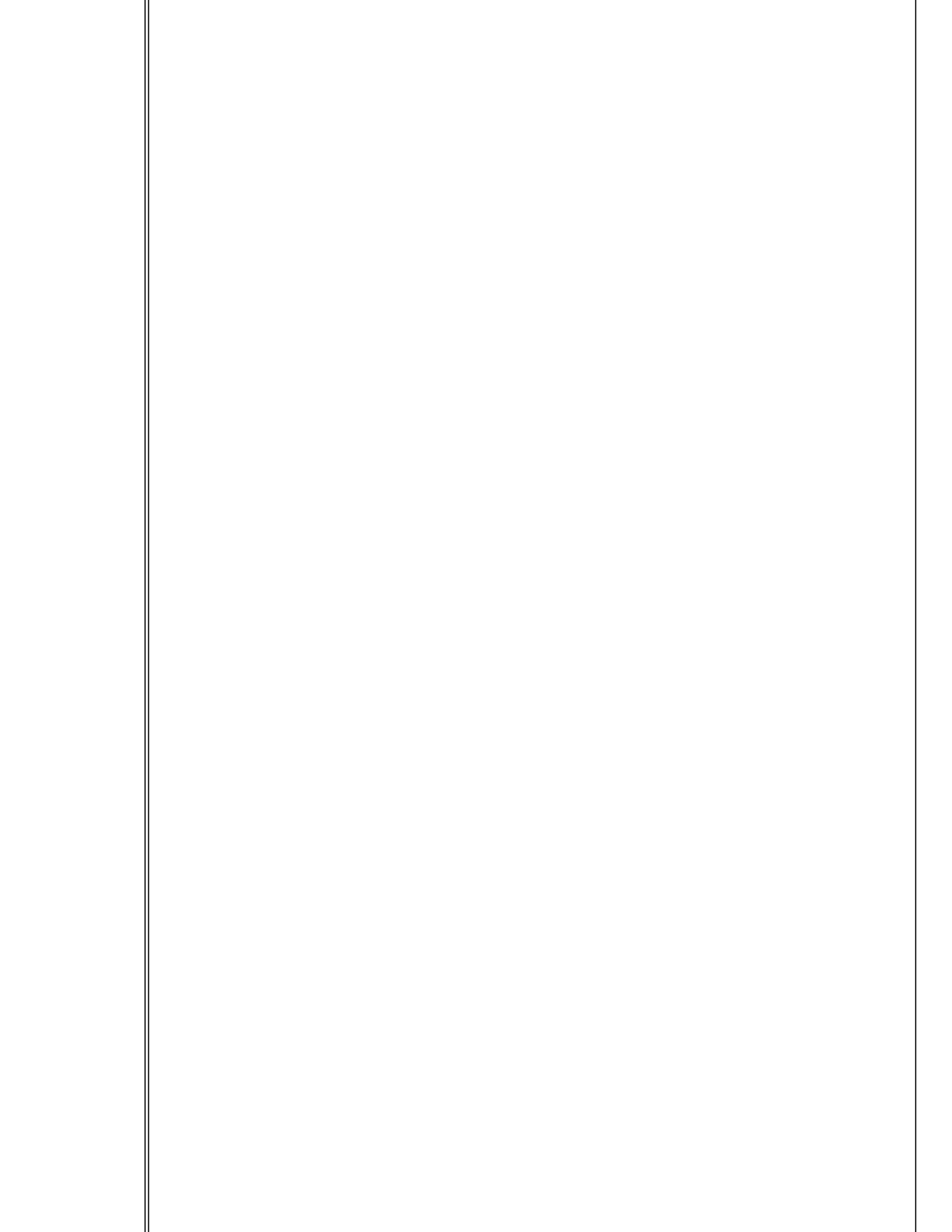
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12 From 2011 to 2013, EPS served as the ISO to 43 merchants that were involved in
13 the .⁵ (Doc.
14 317 at 8-9.). An overview of how EPS functioned during the relevant time period is useful
15 to understanding ities. EPS,
16 as an ISO, had a number of independent contractors, commonly called sales agents, who
17 marketed who wanted to access the credit card system. The
18 sales agents were responsible for gathering a merchant information into a merchant
19 application. The applications sought information on, among other things: (1)
20 address, phone number, and email address, as well as that of the owner; (2) the service or
21 goods offered by the merchant; (3) whether the business had

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1 charging patterns i.e., average, low and high ticket amounts, as well as the average and
2 high amounts the merchant expected to charge every month. (See Doc. 317-14 at 1-3
3 (example merchant application).) As discussed in more detail below, all of this information
4 was relevant to determining the legitimacy and risk level of the business.

5 Once complete, the agent signed an application and submitted it to
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1 - between 2010 and 2013.⁷ (Doc. 317-7 at 12; Doc. 329 at 3;
2 Doc. 331 at 6.) The KMA-Wigdore Defendants were independent contractors, or sales
3 agents. While
4 the KMA-Wigdore Defendants referred many legitimate merchants to EPS, it is undisputed
5 that they
6 activities with the 43 Subject Merchants. (Doc. 331 at 13; Doc. 331-1 at 38.) Load
7 balancing is a technique by which merchants spread sales volume among different
8 merchant entities to evade scrutiny for high chargeback rates. (Doc. 317-13 at 8 (defining
9

10 The Subject Merchant applications, as submitted by the KMA-Wigdore Defendants,
11 were incomplete and each showed characteristics of unreliable merchants. (Doc. 317-13 at
12 10-15.) Such indicators include:

13 processing, being new in business, low credit scores, outstanding debt, terse and vague
14 product descriptions, lack of marketing materials and websites, self-printed checks, and
15 empty bankcard volumes and minimum, average, and maximum ticket sizes. (Id. at 10-12.)
16 Many of the applications also stated that all sales were conducted over the phone, indicating
17 that the merchant could be engaged in telemarketing and should be subject to greater
18 scrutiny. (Id. at 10.)

19 Many of the applications were also submitted in batches that contained similar
20 information. (Id. at 12-15.) For example, on May Tm[(ManMay Tm[(exam)-90 g/TTa-18T0 1 T

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1 Four of these applications contained no email address, which EPS filled in with email
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 3 accounts used to launder money for MNF.⁸ (Id. at 13.) According to the expert, EPS
 4 should have declined all 43 Subject Merchants as unacceptable under Merrick ISO Credit
 5 Policy based on these factors. (Id. at 16.) EPS also should have realized the accounts were
 6 related. (Id. at 12-15.)

7 EPS did not decline the Subject Merchants. Rather, EPS completed and altered the
 8 applications after they were received from the KMA-Wigdore Defendants but before they
 9 were submitted to Merrick. (Doc. 317 at 15-16; Doc. 329 at 4; Doc. 331 at 8.) For example,
 10 someone at EPS altered the application for Elite Marketing Strategies, one of the Subject
 11 Merchants, in several ways that would subject the application to less scrutiny when
 12 submitted to Merrick. The original version of the application submitted to EPS said that

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 15 (Doc. 317-17 at 1, 3.) The application approved by EPS and

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 17
 18 317-28 at 131, 135.) Someone had also filled in the average, low, and high tickets, as well
 19 as the average and high monthly processing volumes, all of which had been left blank in
 20 the original application. (Compare Doc. 317-17 at 1, with Doc. 317-28 at 131.)⁹ Similar
 21 patterns can be seen across nearly all of the applications. (Doc. 317-13 at 27-30.) In one
 22 instance, Michael Peterson, the head of risk management, informed Chonda
 23 Pearson, who was in charge of agent relations, e
 24 missing information to you with the exception of the volume amounts, avg. ticket etc....

25
 26 ⁸ According to Maley, Michael Abdelmehseh told EPS the Subject Merchants listed
 27 the same email address so that he could assist them in addressing chargebacks. (Doc. 331-
 1 at 45-46.) The email address referred chargebacks to him. (Id.)

28 applications when the sales-agent signature line was left blank. (Doc. 317-7 at 264-67.)
 The parties dispute whether Wigdore approved this practice. (Doc. 330 at 4; Doc. 337-1 at
 1-2.) However, the Court finds the dispute has little bearing on the claims at issue.

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[sic] When they have provided all other required items will you please let me know and
-1 at 358.)

After altering the Subject Merchant applications, EPS then boarded them through
-Approval Program. (Doc. 317-

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1 Merrick representative sent Bellet and Peterson an email identifying a number of large-
2 dollar chargebacks received by a Subject Merchant account. (Doc. 317-9 at 73.) Bellet then
3 [sic] (Id.)
4 refers to Abdelmesseh of the KMA-Wigdore Defendants. Bellet testified that Wigdore and
5 meaning escape scrutiny from
6 Merrick by keeping the amount of money processed on each account below a certain
7 threshold. (Doc. 317-7 at 46.) He testified further that its was the directive from
8 Peterson, McCann, Dorsey, and Maley to assist accounts associated
9 with Wigdore in spreading charges across multiple accounts to keep the volume low, or in
10 other words, to engage in load balancing. (Id.)

11 In September 2012, Bellet sent Peterson an email noting that all the supporting
12 documentation for a chargeback dispute related to the Subject Merchant KMA Merchant
13 Services indicated that the sale came from a different Subject Merchant, Rose Marketing
14 LLC. (Doc. 317-9 at 78.) Peterson then informed Abdelmesseh that they would have to let
15 another term for
16 credit card laundering was too great. (Doc. 317-9 at 79; Doc. 317-13 at 8 (indicating
17 factoring is another word for credit card laundering).)

18 Later that month, Peterson sent Bellet and Abdelmesseh an email with a chart
19 Please see
20 my notes below for the accounts that are on hold. We need to spread this out more, I am
21 trying to cap each individual account in the \$30-\$40K range, so if you need to build a
22 -9 at 90-91.) This
23 appears to be an instruction to create more accounts to engage in load balancing for the
24 Subject Merchants. However, Peterson testified he was speaking to the KMA-Wigdore
25 llion to \$3 million
26 a month. (Doc. 317-7 at 191-92.) If these accounts were capped at \$30,000 to \$40,000, the
27 KMA-Wigdore Defendants would need to bring in more merchant accounts to reach that
28 volume. (Id.)

1 and VI of the First Amended Complaint (the _____, and McCann.
2 (See generally Doc. 322.) Count II alleges that EPS, Dorsey, and McCann engaged in credit
3 card laundering on behalf of Money Now Funding, which constitutes unfair acts or
4 practices in violation of § 5 of the _____ ct , 15
5 U.S.C. §§ 45(a) and (n). (Doc. 85 at 52-53.) Count III alleges that EPS, Dorsey, and
6 McCann employed, solicited, or otherwise caused others to engage in credit card
7 laundering in violation of the Telemarketing Sales Rule . 16 C.F.R. §310.3(E)(2). R .
8 (Id. at 55-56.) And Count VI alleges that EPS, Dorsey, and McCann also provided
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1 relevant to this discussion.

2 **II.**

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4 in support of its motion for summary judgment. (Doc. 340.) The first is a 17-page appendix
5 (the
6 response to the motion for summary judgment and why those statements lack foundation.
7 (Doc. 337-1.) The second is a 17-

8 attorney identifies and summarizes portions of the
9
10 have previously settled. (Doc. 344-1.) EPS argues that the two documents constitute
11
12 twelve pages. (Doc. 340; see also Doc. 311 at 4 (setting a 12-
13 reply).)

14 The FTC contends the Appendix is nothing more than an aid to the Court in
15 -9.) The Court agrees. As the
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17 rely on incorrect or incomplete citations. (Doc. 345 at 8-9; see generally

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knowledge; what statements are summaries of evidence in the record; and what documents
Pace, 171

F.Supp.3d at 272. Therefore, the Court will not strike the Declaration.

Having reviewed both the Appendix and the Declaration, the Court finds that both documents are admissible and Motion to Strike (Doc. 340) will be denied.

III.

PS on
Counts II, III, and VI of the FAC.

A. Legal Standard

entifying each claim or defense or
the part of each claim or defense

P. 56(a). A court must grant summary judgment if the pleadings and supporting documents,

dispute as to any material fact and that the movant is entitled to judgment as a matter of

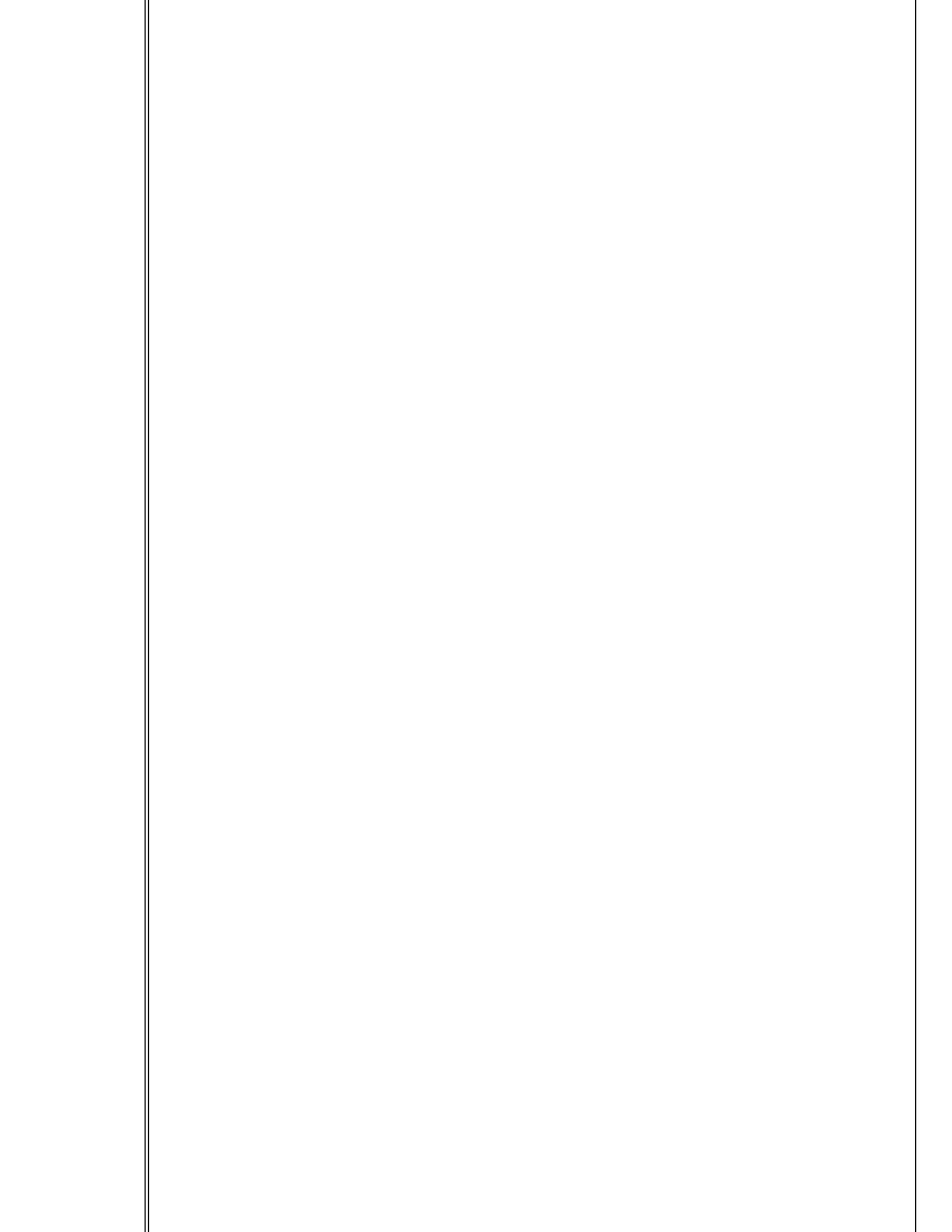
Id.; see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Jesinger v. Nevada Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). Substantive law determines which facts are material. See Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986); _____

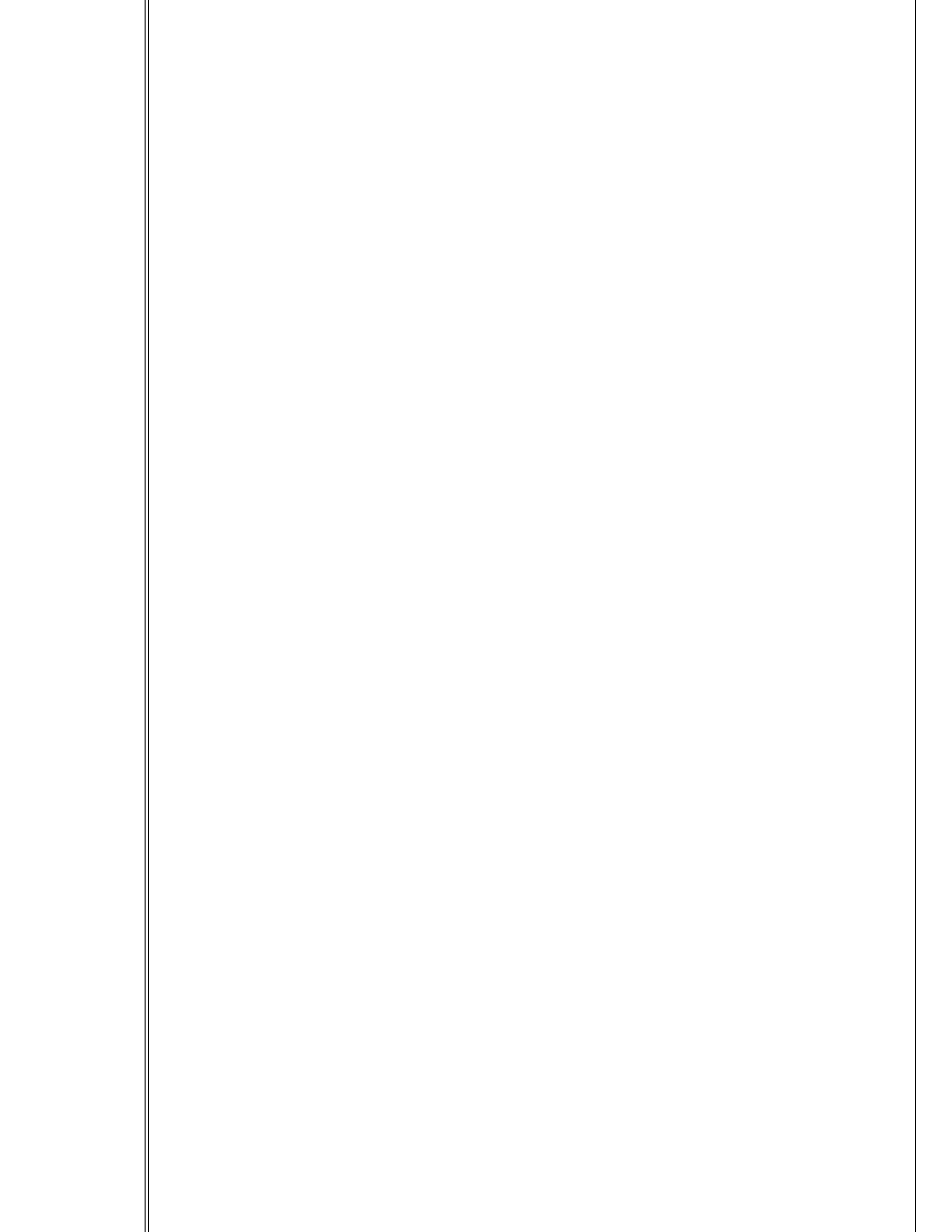
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a. Causation

Section 5 of the FTC Act provides that an act or practice is unfair or deceptive if it
Here, EPS is not the most
immediate or obvious cause of consumer injury. It is undisputed that MNF and its related
entities and principals orchestrated and perpetrated the fraud. Thus, the question is what
the FTC must show to also hold EPS liable for the harm.

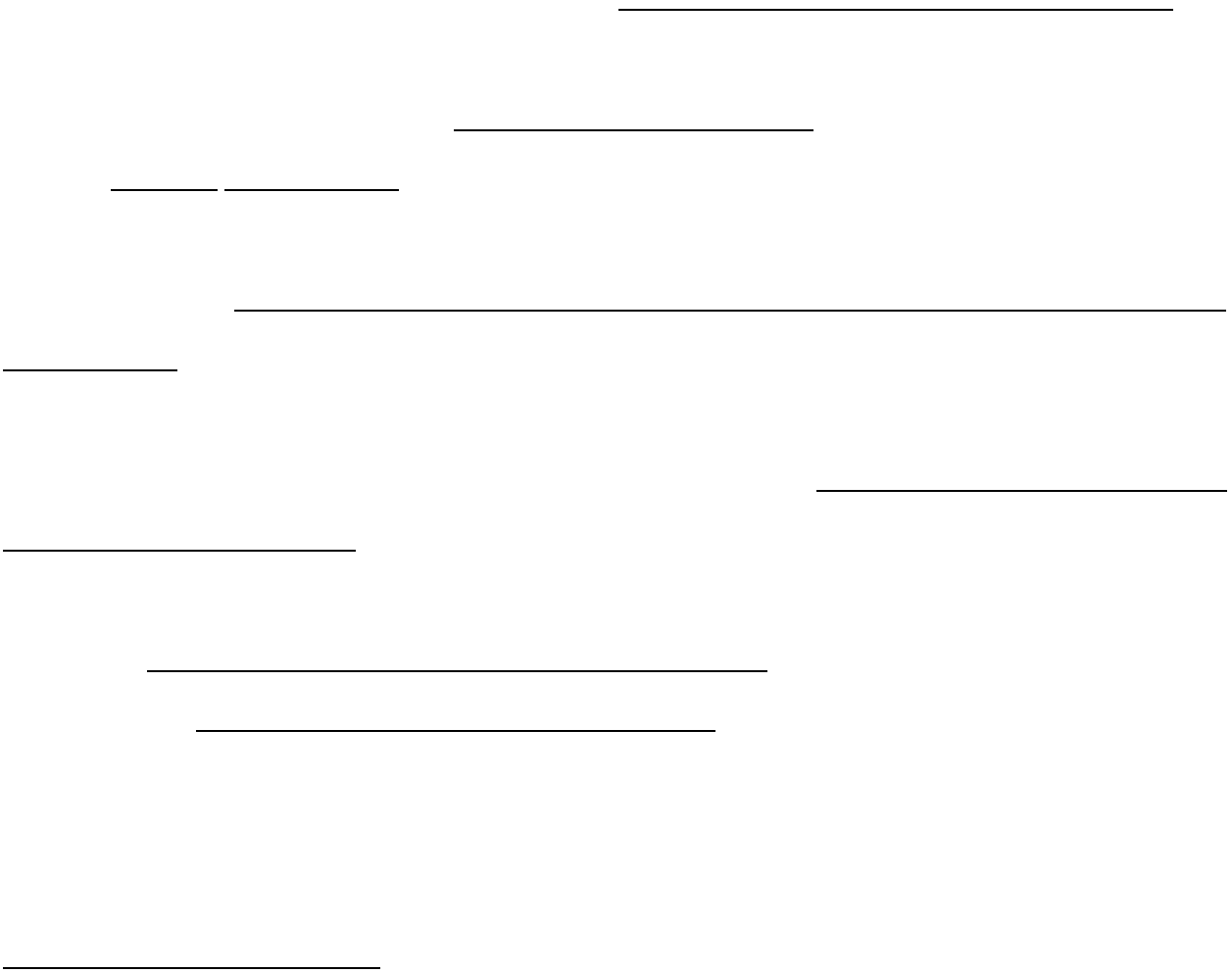
In its opening brief, the FTC argues that EPS can be held liable as a cause of the
consumer injury resulting from the MNF scheme because the MNF scheme could not have
accounts EPS boarded and maintained. (Doc.
322 at 16-17 (citing F.T.C. v. HES Merch. Servs. Co., Inc., No. 6:12-CV-1618-ORL-
22KRS, 2016 WL 1





However, EPS

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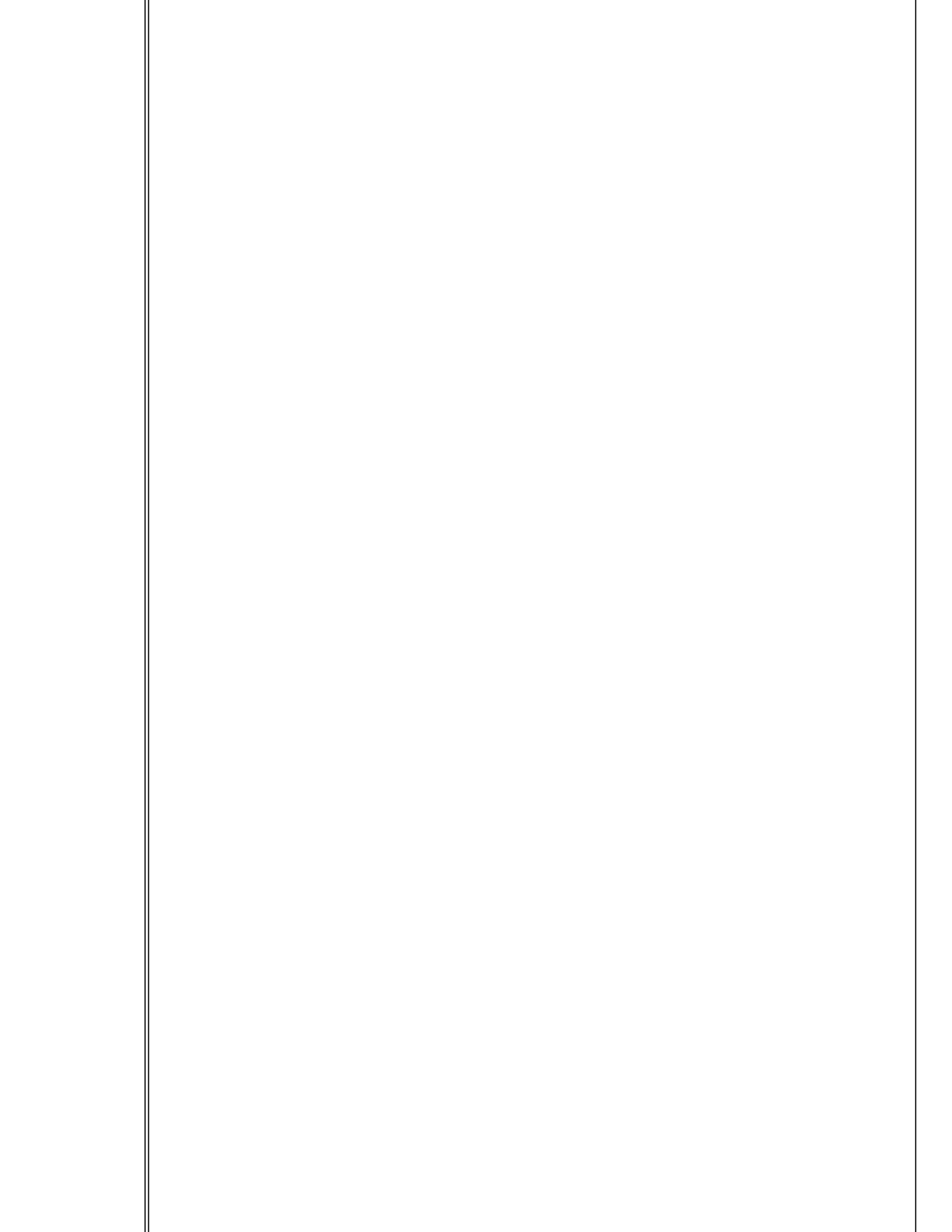
1 evidence that Peterson There is evidence that
2 Dorsey and
3 high-risk or suspicious the account. (Doc. 317-7 at 46, 80, 182-83.) Furthermore, EPS
4 derived its income from a percentage of the money charged by its merchants. The fact that
5 the Subject Merchants ended up being a bad investment for EPS in the long run does not
6 eliminate the incidental benefit of maintaining boarded merchants for EPS.

7 As additional evidence of adversity, EPS highlights the fact that Peterson stole
8 money from EPS by transferring money in diverted accounts into his own bank accounts.
9 (Doc. 331 at 33; see also Doc. 331-1 at 22, 89-90, 92-93, 103.) However, there is no

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11 Merchant accounts. as
12 agent in areas unrelated to the theft. Therefore, Peterson was not an adverse agent and his
13 knowledge is imputed to EPS.

14 Furthermore, Bellet also

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1 to encourage or request or use or obtain their services for credit card laundering.
2 is denied.

3 3. Count VI: Substantial Assistance or Support of Credit Card Laundering in
4 Violation of 16 C.F.R. 310.3(b)

5 The FTC next moves for summary judgment on Count VI of the FAC, arguing that
6 that EPS violated § 310.3(b) of the TSR by assisting and facilitating credit card laundering.
7 (Doc. 322 at 18-19.) Under § 310.3(b)

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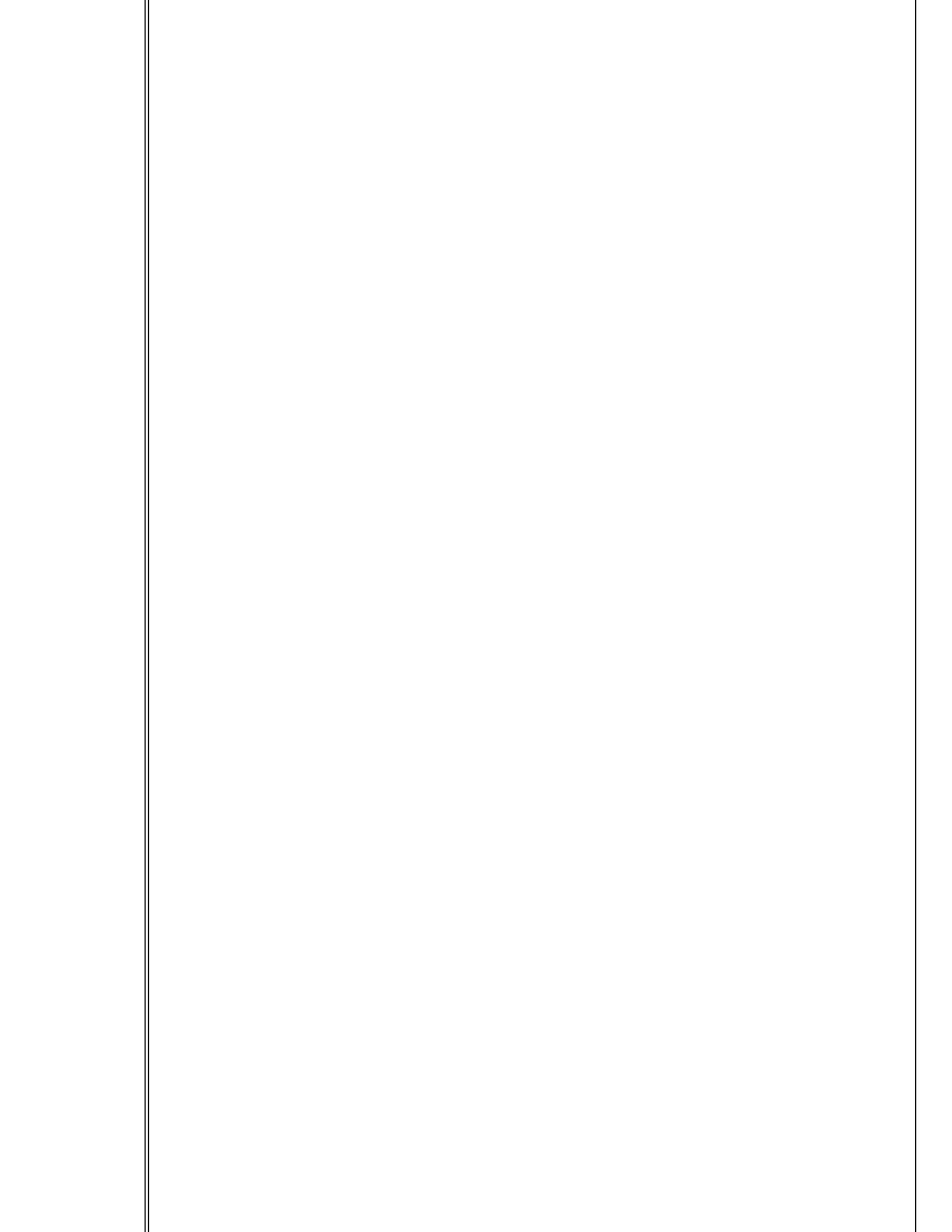
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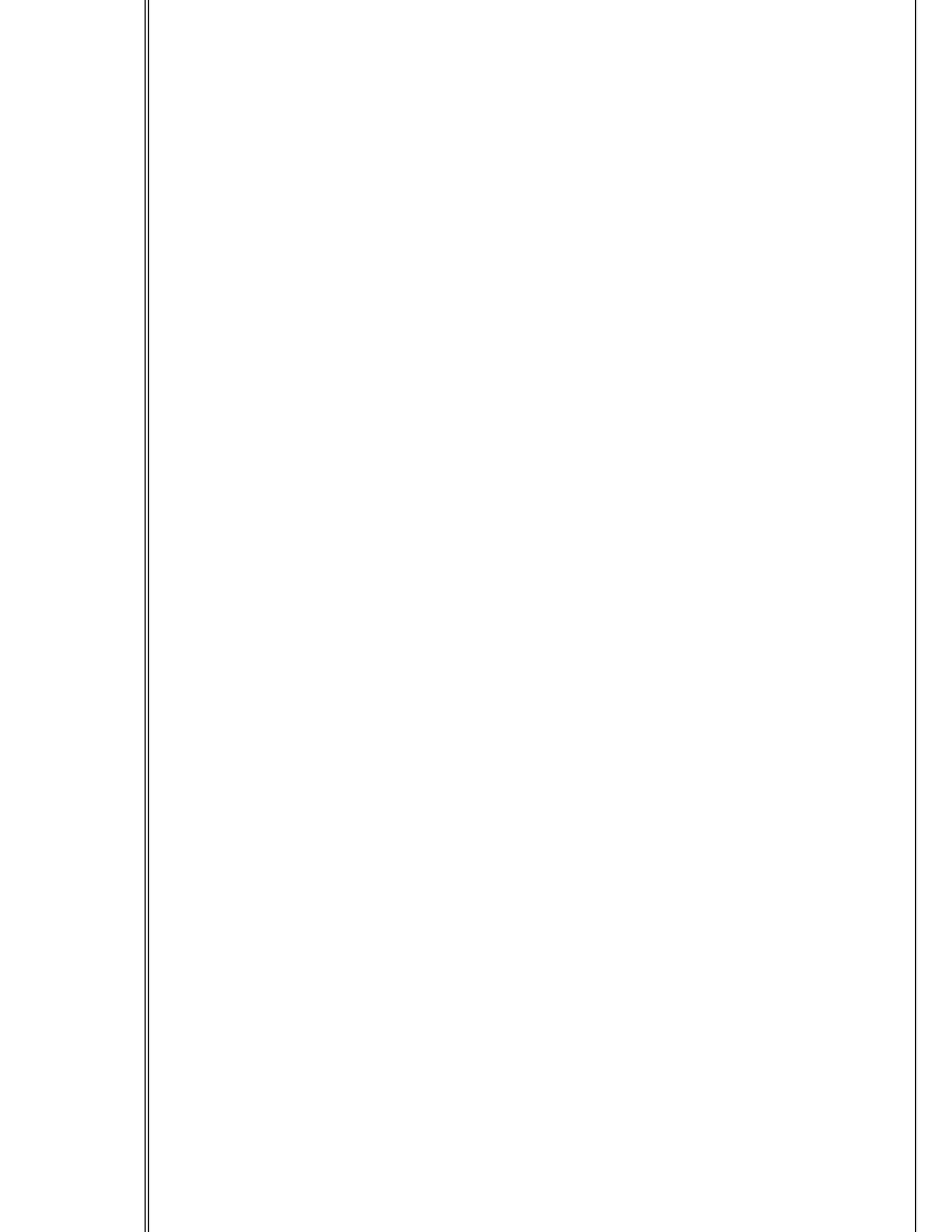
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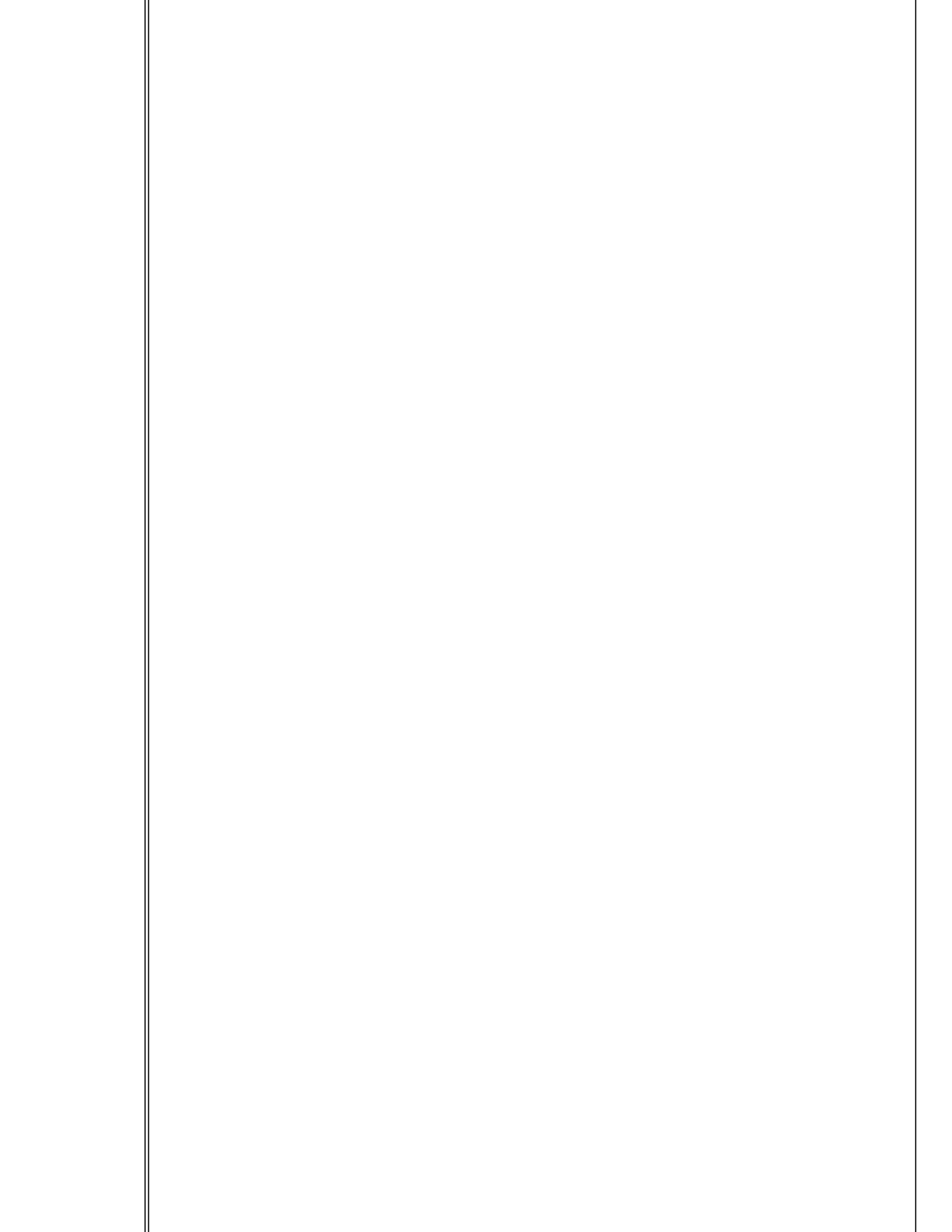


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would be in the public interest, and after notice to the defendant, a temporary restraining





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