

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as Merchants, children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

D. “**Defendants**” means: First American Payment Systems, LP, a limited partnership,

I. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

not pay a debit, withdrawal or Charge; or

3. requested that Defendants not cause any debit, withdrawal, or Charge to be made;

unless new express authorization from the Merchant has been obtained. At a minimum, “express authorization” means an affirmative act communicating unambiguous assent for debits or withdrawals to be made from a Merchant’s bank or other financial account. Provided, however, that if Defendants establish that the Merchant revoked its authorization pursuant to B.1, B.2 or B.3 of this Section only as to specific debits, withdrawals, or Charges, such as by establishing that the Merchant continued to use Defendants’ products or services to process payments within 30 days after the revocation, then the revocation of authorization shall apply only to those specific debits, withdrawals or Charges.

IV. PROHIBITIONS REGARDING EXISTING MERCHANTS

IT IS FURTHER ORDERED that Defendants, Defendants’ officers, agents, employees, and attorneys and all others 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 the following as to Merchants who entered into the agreement for services through FirstOnBoard before April 6, 2020:

- A. debiting, withdrawing, charging, or attempting to collect an early termination fee;
- B. stating to any such Merchant that the Merchant will owe an early termination fee if the Merchant cancels before the end of the contractual time period.

receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service with a Negative Option Feature, are permanently restrained and enjoined from:

A. obtaining Billing Information from a Merchant for any transaction involving a good or service that includes a Negative Option Feature, without first disclosing Clearly and Conspicuously:

1. the existence of the Negative Option Feature and the extent to which the Merchant must take affirmative action to avoid extending the term of any agreement through the operation of the Negative Option Feature;
2. the deadline(s) (by date or frequency) by which the Merchant must affirmatively act to avoid extending the term of any agreement through the operation of the Negative Option Feature;
3. the name of the seller or provider of the good or service and, if the name of the seller or provider will not appear on billing statements, the billing descriptor that will appear on such statements;
4. a description of the good or service;
5. any Charge or cost for which the Merchant is responsible in connection with the cancellation of any agreement for goods or services, including any early termination fee Charged for cancelling the agreement before a fixed time period has expired; and
6. the simple cancellation mechanism to avoid extending the term of any agreement through the operation of the Negative Option Feature, as required by this

Order; or

B. failing to send the Merchant:

1. immediately after the Merchant's submission of an online agreement, written confirmation of the transaction by email. The email must Clearly and Conspicuously disclose all the information required by Subsection A, and contain a

to obtain payment from a Merchant, unless Defendants first obtain the express informed consent of the Merchant to do so. To obtain express informed consent for the purposes of this Section, Defendants must:

A. for all written offers (including over the Internet, such as through a web-based application), obtain consent through a check box, signature, or other substantially similar method, which the Merchant must affirmatively select or sign to accept the Negative Option Feature, and no other portion of the offer. Defendants shall disclose Clearly and Conspicuously, and immediately adjacent to such check box, signature, or substantially similar method of affirmative consent, only the following, with no additional information:

1. the extent to which the Merchant must take affirmative action to avoid extending the term of any agreement through the operation of the Negative Option Feature; and

2. the deadline(s) (by date or frequency) by which the Merchant must affirmatively act to avoid extending the term of any agreement through the operation of the Negative Option Feature;

B. for all oral offers, prior to obtaining any Billing Information from the Merchant:

1. Clearly and Conspicuously disclose the information contained in Subsection A of the Section titled Required Disclosures Relating to Negative Option Feature; and

2. obtain affirmative unambiguous express oral confirmation that the Merchant: a) consents to being Charged for any good or service, including providing, at a minimum, the last 4 digits of the Merchant's account number to be Charged, b)

A. Judgment in the amount of *Four Million, Nine Hundred Thousand Dollars* (\$4,900,000) is entered in favor of the Commission against Defendants, jointly and severally, as monetary relief.

B. Defendants are ordered to pay to the Commission *Four Million, Nine Hundred Thousand Dollars* (\$4,900,000), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

C. 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.

D. 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.

E. 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.

F. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

G. 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.

XI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. 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.

XII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED

Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents and representatives having managerial responsibilities for 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, th1 Tcom0J0.0001 Tc -C[m13[tpF -2eLiOrd7 days o30

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. FIRST AMERICAN PAYMENT SYSTEMS, LP.

XIV. 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, each Defendant in connection with promoting or offering for sale, or debiting for, any good or service, 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. all records relating to the compliance program mandated by the Section titled Maintaining a Compliance Program, including all documents relating to each Merchant complaint investigated;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. copies of all unique scripts, training materials, or other promotional or marketing materials; and
- F. copies of each unique written agreement used to sell payment processing goods or services to Merchants.

XV. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and any failure to transfer any 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 telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to 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.

XVI. 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

FOR DEFENDANTS:



Date: 06/09/2022

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DEFENDANT FIRST AMERICAN



AS AN OFFICER OF FIRST AMERICAN
PAYMENT SYSTEMS, LP

DEFENDANT ELIOT MANAGEMENT GROUP, LLC



Date: 06/09/2022

MANAGEMENT GROUP, LLC

DEFENDANT THINK POINT FINANCIAL, LLC



Date: 06/09/22

AS AN OFFICER OF THINK POINT
FINANCIAL, LLC