

COPY

AUG 27 2015



MICHAEL K. JEANES, CLERK

DEPUTY CLERK

A. Driver
Deputy Clerk

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
(Firm Bar No. 14000)
3 **JORDAN CHRISTENSEN** (Bar No. 029077)
4 **ASSISTANT ATTORNEY GENERAL**
1275 West Washington Street
5 Phoenix, Arizona 85007-2997
6 Telephone: (602) 542-8327
7 Facsimile: (602) 542-4377
consumer@azag.gov
Attorneys for State of Arizona

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 In the Matter of

11 **MERCHANT PROCESSING SOLUTIONS,**
12 **LLC, d/b/a PAYMENT SYSTEMS CORP,**

13 Respondent.

Case No: **CV2015-010566**
ASSURANCE OF DISCONTINUANCE

14 The Attorney General of the State of Arizona and Respondent Merchant Processing
15 Solutions, LLC, d/b/a Payment Systems Corp ("Payment Systems") agree to the entry of the
16 following Assurance of Discontinuance ("Assurance") pursuant to Arizona Revised Statutes
17 ("A.R.S.") § 44-1530, a provision of the Arizona Consumer Fraud Act.

18 The Attorney General alleges the following:

19 1. Payment Systems is a California limited liability company that markets and sells
20 credit and debit card processing services as an agent on behalf of third party payment processing
21 companies.

22 2. Since at least 2012, Payment Systems initiated telephone calls to Arizona small
23 business owners ("Merchants") solely for the purpose of arranging in-person payment
24 processing services sales appointments, conducted in-person payment processing services sales
25 presentations at Merchant locations, and negotiated payment processing agreements and
26

1 equipment leases with Merchants on behalf of third party payment processing and equipment
2 leasing companies.

3 3. Some Merchants claimed that during the payment processing services sales
4 presentations, Payment Systems' sales agents promised them they would be charged a flat one
5 percent (1%) transaction surcharge to process credit card transactions. The third party payment
6 processing contracts, which were prepared by the third party payment processing companies,
7 disclosed the terms of the agreements, including all fees that would be charged.

8 4. While some Merchants claimed Payment Systems' sales agents quoted a 1 percent
9 transaction surcharge for credit card transactions, the third party contracts signed by Merchants
10 often required them to pay a 2.79 percent transaction surcharge for "non-qualified" credit card
11 transactions. Non-qualified transactions usually involve the use of rewards-type credit cards.

12 5. According to Payment Systems, the Merchants that complained of such inadequate
13 transaction surcharge disclosure paid at least \$31,684 more for "non-qualified" credit card
14 transactions processed with a 2.79 percent transaction surcharge as opposed to the 1 percent
15 transaction surcharge for "qualified" credit card transactions.

16 6. Some Merchants claimed that Payment Systems' sales agents inadequately
17 disclosed other payment processing and equipment leasing fees included in the third party
18 processing and equipment lease contracts, including documentation fees, monthly statement
19 fees, wireless connection fees, inactivity fees, security standards compliance fees, and federal
20 regulatory reporting fees.

21 7. Some Merchants claimed Payment Systems sales representatives made statements
22 touting the advantages of purchasing credit card processing services through Payment Systems,
23 including:

- 24 • the Merchants could significantly save on processing fees;
- 25 • "for today only," Merchants could receive special limited time processing
- 26 rates with zero set-up and application fees; and

- 1 • the Merchants could terminate the equipment leases at any time if they were
2 not satisfied with the equipment, despite the third party equipment lease
3 contracts stating otherwise.

4 8. In fact:

- 5 a. the claimed savings hinged in large part on whether the Merchants accepted
6 or declined "non-qualified" credit card transactions;
7 b. the special processing rates and fee waivers offered "for today only" were
8 always applied; and
9 c. the equipment leases were "non-cancellable" leases that could only be
10 terminated by paying the entirety of the remaining lease payments.

11 9. The Attorney General alleges that Payment Systems' actions, as described in
12 paragraphs three through eight above, violate the Arizona Consumer Fraud Act. Payment
13 Systems denies all such claims and denies that these actions violated the Arizona Consumer
14 Fraud Act or any other laws.

15 10. The Arizona Attorney General is willing to accept this Assurance of
16 Discontinuance pursuant to A.R.S. § 44-1530.

17 11. Pursuant to A.R.S. § 44-1530, this Assurance of Discontinuance shall not be
18 considered an admission of a violation for any purpose.

19 NOW, THEREFORE, without admitting any violations of the Arizona Consumer Fraud
20 Act, Payment Systems, on behalf of itself and its agents, servants, employees, successors,
21 assignees, and all other persons in active concert or participation with it, agrees, undertakes and
22 assures:

23 12. Payment Systems shall comply with the Arizona Consumer Fraud Act, A.R.S. §
24 44-1522 *et seq.*, as it is now written and as it may be amended;

25 13. Payment Systems shall comply with the Arizona Telephone Solicitation Statute,
26 A.R.S. § 44-1271 *et seq.*, as it is now written and as it may be amended;

1 14. Payment Systems shall not make any credit card processing fee savings claims to
2 Arizona Merchants unless those claims clearly communicate the respective transaction
3 surcharges for each of the various categories of credit cards (i.e. "qualified" and
4 "nonqualified");

5 15. Payment Systems shall not offer special processing pricing promotions or fee
6 waivers "for today only" if such promotions are always available;

7 16. Payment Systems shall fully disclose all equipment lease termination terms and
8 obligations to all Arizona Merchants with which it negotiates equipment leases;

9 17. Payment Systems shall pay to the State of Arizona the amount of Forty Six
10 Thousand Six Hundred Eighty Four Dollars (\$46,684) as consumer restitution pursuant to
11 A.R.S. § 44-1530. Thirty One Thousand Six Hundred Eighty Four dollars (\$31,684) of such
12 restitution represents the amount that Merchants, who negotiated credit card processing
13 agreements with Payment Systems and filed a complaint relating to such agreements, have paid
14 for "non-qualified" credit card transactions in excess of a flat 1 percent processing rate. The
15 remaining Fifteen Thousand Dollars (\$15,000) in restitution shall be distributed to Merchants
16 who negotiated third party equipment leases with Payment Systems and filed consumer
17 complaints to the State regarding their rights and obligations under such equipment leases.

18 18. Payment Systems shall pay to the State of Arizona up to a total of Ten Thousand
19 Dollars (\$10,000), in aggregate, in additional restitution for eligible Merchants who file
20 complaints against Payment Systems within 180 days of entry of this Assurance of
21 Discontinuance. For each eligible Merchant, such additional restitution is calculated as the
22 amount of payment processing fees paid as "non-qualified" credit card processing fees in excess
23 of a flat 1 percent credit card transaction surcharge. For the purposes of this Assurance of
24 Discontinuance, "eligible Merchants" shall include all Merchants who: 1) negotiated processing
25 agreements with Payment Systems, 2) file a complaint with the Arizona Attorney General's
26 office within 180 days of entry of this Assurance of Discontinuance, and 3) paid credit card

1 transaction surcharges for "non-qualified" credit card transactions in excess of the flat 1 percent
2 rate allegedly promised by Payment Systems' sales agents. The Attorney General shall provide
3 Payment Systems copies of all such complaints filed by eligible Merchants, and Payment
4 Systems shall calculate the amount of credit card processing fees each eligible Merchant paid in
5 excess of 1 percent for "non-qualified" credit card transactions. Payment Systems shall remit to
6 the State these additional restitution payments for each eligible Merchant within 45 days of
7 receiving a copy of the complaint from the State.

8 19. All restitution herein shall be paid according to the quarterly payment schedule
9 enumerated in paragraph 21 below. Interest shall accrue on restitution balances at a rate of five
10 percent (5%) per annum from the date this Assurance is entered until paid. All restitution
11 payments ordered herein shall be deposited by the Attorney General into an interest bearing
12 consumer restitution subaccount of the Consumer Remediation Revolving Fund pursuant to
13 A.R.S. § 44-1531.02, and distributed to eligible Merchants by the Attorney General's Office.
14 In the event the amount ordered as restitution herein is not sufficient to fully restore eligible
15 Merchants the amounts they are due, the restitution collected shall be distributed to them on a
16 pro rata basis. In the event any portion of the restitution ordered herein cannot be distributed to
17 eligible Merchants, or exceeds the amount of restitution, such portion shall be deposited by the
18 Attorney General's Office into the Consumer Protection – Consumer Fraud Revolving Fund in
19 accordance with A.R.S. § 44-1531.01 and used for the purposes specified therein.

20 20. Payment Systems shall pay to the State of Arizona the amount of Sixteen
21 Thousand Five Hundred Dollars (\$16,500) for attorneys' fees and costs of investigation,
22 pursuant to A.R.S. § 44-1530, due according to the payment terms in paragraph 21 below.
23 Interest shall accrue on the balance of the attorneys' fees and costs of investigation at a rate of
24 five percent (5%) per annum from the date this Assurance is entered until paid. Payments
25 towards attorneys' fees and investigative costs shall be deposited by the Attorney General's
26 Office into the Consumer Protection – Consumer Fraud Revolving Fund in accordance with to

1 A.R.S. § 44-1531.01 and used for the purposes set forth therein. -

2 21. Payment Systems shall make quarterly payments of no less than Ten Thousand
3 (\$10,000) each until the balance of all restitution, investigative fees and costs, and interest has
4 been paid. The payments ordered herein shall be made payable to the Office of the Arizona
5 Attorney General each quarter beginning on October 1, 2015, with each payment due thereafter
6 on the first day of the month on each successive third month (e.g. January 1, 2016, April 1,
7 2016, July 1, 2016, etc.). The State shall use the initial monies paid by Payment Systems to pay
8 claims for restitution to all eligible Merchants, as defined in paragraph 18 above. After the
9 distribution of restitution, any remaining payments made by Payment Systems shall be applied
10 to the State's attorneys' fees, investigative costs, and interest.

11 22. If Payment Systems fails to make a payment under paragraph 21 above within
12 fifteen (15) days of the date it is due, Payment Systems shall be deemed in default of its
13 payment obligation. In the event of a default, and in addition to any other relief or remedy
14 elected or pursued by the state, all payments set forth herein shall be accelerated and shall
15 become due and owing in their entirety as of the date of default, including interest accrued at the
16 rate of five percent (5%) per annum from the date this Assurance was entered.

17 23. Within 180 days following the entry of this Assurance of Discontinuance, any
18 Arizona business that: 1) entered into a payment processing agreement through negotiation with
19 Payment Systems, 2) continues to process under such agreement as of the date of entry of this
20 Assurance of Discontinuance, and 3) submits a request for renegotiation or termination within
21 180 following the entry of this Assurance of Discontinuance, shall be entitled to renegotiate or
22 terminate such payment processing agreement without a termination fee or other penalty by so
23 notifying Payment Systems in writing, by letter to Payment Systems, Legal Department, 515
24 South Flower Street, Suite 1200, Los Angeles, California, 90071, or by email to
25 Legal@paymentsystemscorp.com. Payment Systems shall take all necessary steps to ensure this
26 renegotiation or termination right. This termination right shall not apply to third party

1 equipment leases.

2 24. The injunctive (i.e nonfinancial) provisions of this Assurance of Discontinuance
3 applies to Payment Systems, any successor entity or entities, whether by acquisition, merger or
4 otherwise, Payment Systems' current or future officers, directors, managerial or supervisory
5 employees, and to any other employees or agents having responsibilities with respect to the
6 subject matter of this Assurance of Discontinuance.

7 25: The parties understand and agree that this Assurance of Discontinuance shall not
8 be construed as an approval of or sanction by the Attorney General of Payment Systems' past,
9 present or future business practices, and Payment Systems is prohibited from making any
10 representations to the contrary. Nothing in this Assurance shall be construed of relieving
11 Payment Systems of its obligation to comply with all applicable state and federal laws,
12 regulations, or rules, or granting it permission to engage in any acts or practices prohibited by
13 such laws, regulations, or rules.

14 26. Payment Systems understands that a violation of this Assurance of Discontinuance
15 within six (6) years of the filing thereof constitutes prima facie evidence of a violation of A.R.S.
16 § 44-1522. This court therefore retains jurisdiction over the parties and the subject matter for
17 purposes of enabling the State of Arizona to apply to this court for the enforcement of and
18 Respondent's compliance with this Assurance.

19 27. This Assurance of Discontinuance does not in any way limit the right of the
20 Attorney General to: (a) bring a legal action against Payment Systems for any future acts which
21 violate the Consumer Fraud Act, whether or not such acts are in violation of this Assurance; or
22 (b) enforce this Assurance.

23 28. If any clause, provision, or section of this Assurance of Discontinuance shall, for
24 any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or
25 unenforceability shall not affect any other clause, provision, or section of this Assurance, and
26 this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable

1 clause, section, or other provision had not been contained herein.

2 29. No waiver, modification, or amendment of the terms of this Assurance of
3 Discontinuance shall be valid or binding unless made in writing, signed by both parties,
4 approved by the Court as necessary, and then only to the extent specifically set forth in such
5 written waiver, modification, or amendment.

6 30. Respondent, or its authorized representative, has fully read and understands this
7 Assurance of Discontinuance, understands the legal consequences involved in signing it, asserts
8 that this is the entire agreement of the parties, and that there are no other representations or
9 agreements not stated in writing herein, and no force, threats, or coercion of any kind have been
10 used to obtain its signature.

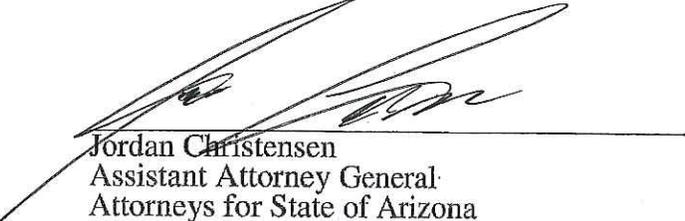
11 31. This Assurance may be executed in counterparts, and a facsimile or .pdf signature
12 shall be deemed to be, and shall have the same force and effect, as an original signature.

13 32. The person signing this Assurance of Discontinuance on behalf of Payment
14 Systems represents and declares that he or she is authorized to do so.

15 [the remainder of this page was intentionally left blank]
16
17
18
19
20
21
22
23
24
25
26

1 RESPECTFULLY SUBMITTED this 27th day of August, 2015.

2 Mark Brnovich
3 Attorney General

4 
5
6 Jordan Christensen
7 Assistant Attorney General
8 Attorneys for State of Arizona

9
10 Merchant Processing Solutions, LLC d/b/a Payment Systems Corp

11 
12 Merchant Processing Solutions, LLC authorized agent
13
14
15
16
17
18
19
20
21
22
23
24

25 #4190324 V3