

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CAPITAL PAYMENTS, LLC, a Delaware limited liability company, n/k/a BLUEFIN PAYMENT SYSTEMS LLC,

Defendant.

Case No. 16-CV-00526-ADS-AYS

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ **FEB 03 2016** ★

LONG ISLAND OFFICE

Plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), filed its Complaint against Capital Payments, LLC n/k/a Bluefin Payment Systems LLC ("Defendant") for a permanent injunction and other equitable relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108. The FTC and Defendant stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment ("Order") to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant provided substantial assistance or support to a telemarketing operation known as Tax Club that Defendant knew, or consciously avoided knowing, was engaged in violations of the FTC's Trade Regulation Rule entitled Telemarketing Sales Rule ("TSR" or "Rule"), 16 C.F.R. Part 310, and charges that Defendant's acts or practices are deceptive telemarketing acts or practices that violate the TSR. 16 CFR § 310.3(b).
3. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.
4. Defendant waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees.
5. Defendant waives all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. **"ACH Debit"** means any completed or attempted debit to a Person's account at a financial institution that is processed electronically through the Automated Clearing House Network.
2. **"Card-Not-Present Transaction"** means a debit or credit card transaction whereby the Person's debit or credit card is not physically swiped, scanned, or imprinted.

3. “**Chargeback**” means a procedure whereby an issuing bank or other financial institution charges all or part of an amount of a Person’s credit or debit card transaction back to the acquiring or merchant bank.

4. “**Chargeback Rate**” means the proportion (expressed as a percentage) of chargebacks out of the total number of credit or debit card sales transactions, calculated separately for each payment card association (e.g., American Express, Discover Card, MasterCard, or Visa).

5. “**Client**” means any Person who obtains, directly or indirectly, from Defendant a merchant account that enables the acceptance of payments from a consumer for goods, services, or charitable donations. Provided, however, Client does not mean any Person:

(A) for whom Defendant either (i) provides Payment Gateway services, encryption services, and/or card-reading equipment to such Person or for such Person’s benefit, and/or (ii) refers such Person to other ISOs for the provision of a merchant account, and

(B) with respect to whom Defendant does not (i) have a contractual obligation to underwrite or otherwise accept merchant applications for Payment Processing services, (ii) have a contractual obligation to review, evaluate and/or assist in resolving Chargebacks or to process or assist in processing Remotely Created Payment Orders, Remotely Created Checks, or ACH Debits, or (iii) hold financial liability in the event of losses related to Payment Processing activities conducted by or on behalf of such Person.

6. “**Covered Client**” means any Client engaged in any of the following types of businesses: (a) Outbound Telemarketing; (b) credit card protection or identity theft services; (c)

timeshare resale services; (d) Membership Clubs; (e) medical discount membership plans; or (f) mortgage debt reduction services.

7. **“Defendant”** means Capital Payments, LLC, also doing business as Bluefin Payment Systems LLC, and its successors and assigns.

8. **“Higher Risk Client”** means any Client that (a) on an annual basis, whether measured by a single merchant account or by the aggregate of all merchant accounts held by the Client, processes more than thirty percent (30%) Card-Not-Present Transactions and more than five hundred thousand dollars (\$500,000) in total Card-Not-Present Transactions and whose Chargeback Rate exceeds 0.5% and total number of chargebacks exceed fifty (50) in any month; or (b) is a Covered Client.

The term “Higher Risk Client” does not include government entities, accredited colleges, universities, vocational schools, religious ministries, public utilities, or publicly traded companies.

9. **“Independent Sales Organization”** or **“ISO”** means any Person that (a) enters into an agreement or contract with a Payment Processor to sell or market Payment Processing services to a merchant; and (b) holds, directly or indirectly, either partial or full liability in the event of losses related to the Payment Processing activities conducted by or on behalf of the merchant.

10. **“Membership Club”** means any arrangement whereby a Person who purportedly agrees to the arrangement (i.e., member) receives specified travel benefits, health care benefits, home protection, credit card protection, legal services, or weight loss programs over a period of time.

11. **“Money Making Opportunities”** means any good or service represented to enable

or to assist consumers in: (a) earning income through a work-from-home business opportunity; (b) obtaining training or education on how to establish a business or earn money or other consideration through a business; (c) obtaining employment for an upfront fee; or (d) obtaining government grants or other such government income, benefits, or scholarships.

The term “Money Making Opportunities” does not include services provided by accredited colleges, universities, and vocational schools.

12. “**Non-Credit Card Total Return Rate**” means the proportion (expressed as a percentage) of all ACH Debit, attempted RCC or RCPO transactions that are returned for any reason, whether before or after payment, out of the total number of such attempted transactions, calculated separately for each transaction type.

13. “**Outbound Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services in which the telephone calls are initiated by the Person engaged in telemarketing as opposed to the customer.

14. “**Payment Gateway**” means the transmission of consumer payment data between a payment portal (such as a website, mobile phone, card reading terminal, kiosk, or interactive voice responsive service) and a Payment Processor for the purpose of authorizing the transaction.

15. “**Payment Processor**” means any Person providing Payment Processing services in connection with another Person’s sale of goods or services or in connection with any charitable contribution.

16. “**Payment Processing**” means providing a Person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment mechanism, including, but not limited to, Remotely Created Payment Orders, Remotely Created Checks, ACH Debits, or

debit, credit, prepaid, or stored value cards. Whether accomplished through the use of software or otherwise, Payment Processing includes, among other things: (a) reviewing and approving merchant applications for payment processing services; (b) providing the means to transmit sales transaction data from merchants to acquiring banks or other financial institutions; (c) clearing, settling, or distributing proceeds of sales transactions from acquiring banks or financial institutions to merchants; or (d) processing Chargebacks or returned Remotely Created Payment Orders, Remotely Created Checks, or ACH Debits.

Notwithstanding the foregoing, Payment Processing does not include the Defendant's provision of card reading equipment or transaction security solutions (such as encryption) to or for the benefit of merchants.

17. **"Person"** means any natural person or any entity, corporation, partnership, or association of persons.

18. **"Remotely Created Check"** or **"RCC"** means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the Person on whose financial account the check is drawn. A remotely created check is often referred to as a "demand draft," "telephone check," or "preauthorized draft." For purposes of this definition, a Remotely Created Check originates as a paper-based transaction, but can be processed subsequently through electronic means (such as through checking imaging or scanning) or through non-electronic means.

19. **"Remotely Created Payment Order"** or **"RCPO"** means a payment instruction or order drawn on a Person's financial account that is initiated or created by the payee and that does not bear a signature applied, or purported to be applied, by the Person on whose financial account

the order is drawn, and which is deposited into or cleared through the check clearing system. For purposes of this definition, unlike a Remotely Created Check, a Remotely Created Payment Order does not originate as a paper-based transaction. A Remotely Created Payment Order is created when a payee directly or indirectly enters financial account and routing numbers into an electronic check template that is converted into an electronic file for deposit into the check clearing system.

I.

**PROHIBITION AGAINST PAYMENT PROCESSING
OR ACTING AS AN ISO**

IT IS ORDERED that Defendant, whether acting directly or through an intermediary, is permanently restrained and enjoined from Payment Processing or acting as an ISO for any Client (a) offering to sell, selling, promoting or marketing any Money Making Opportunity, or (b) listed on the MasterCard Member Alert to Control High-Risk Merchants (MATCH) list for any of the following reasons: excessive chargebacks or fraud, identification as a Questionable Merchant per the MasterCard Questionable Merchant Audit Program, merchant collusion, illegal transactions, identity theft, or credit card laundering.

II.

PROHIBITION AGAINST ASSISTING AND FACILITATING

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, 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, in connection with the Defendant's Payment Processing or acting as an ISO for a Client, are permanently restrained and enjoined from providing substantial assistance or support to any Person that they know, or should

know, is engaged in:

- A. Misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of any goods or services;
- B. Misrepresenting, directly or by implication, any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policies;
- C. The unauthorized debiting or charging of consumer bank or credit card accounts;
- D. Tactics to avoid fraud and risk monitoring programs established by any financial institution, acquiring bank, or the operators of any payment systems, including, but not limited to, balancing or distributing sales transaction volume or sales transaction activity among multiple merchant accounts or merchant billing descriptors; splitting a single sales transaction into multiple smaller transactions; or using shell companies to apply for additional merchant accounts; or
- E. Any deceptive, unfair, or abusive act or practice prohibited by Section 5 of the FTC Act or by the TSR.

III.

REASONABLE SCREENING OF PROSPECTIVE HIGHER RISK CLIENTS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, 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 Payment Processing or acting as an ISO for any prospective Higher Risk Client without first engaging in a reasonable screening of the prospective Higher Risk Client to determine whether the prospective Higher Risk Client's business practices are, or are likely to be,

deceptive or unfair within the meaning of Section 5 of the FTC Act , or in violation of the TSR.

Such reasonable screening shall include, but not be limited to:

- A. Obtaining from each prospective Higher Risk Client:
 1. A description of the nature of the prospective Higher Risk Client's business, including describing the nature of the goods and services sold and methods of sale, for which the prospective Higher Risk Client seeks Payment Processing services;
 2. The name of the principal(s) and controlling Person(s) of the entity, and Person(s) with a majority ownership interest in the entity;
 3. A list of all business and trade names, fictitious names, DBAs, and Internet websites under or through which the prospective Higher Risk Client has marketed during the preceding two years, or intends to market the goods and services for which the prospective Higher Risk Client seeks Payment Processing services;
 4. Each physical address at which the prospective Higher Risk Client has conducted business during the preceding two years or will conduct the business(es) identified pursuant to subsection (1) of this Section III.A;
 5. The name and address of every acquiring bank, originating depository financial institution (if Defendant proposes to provide Payment Processing services for ACH Debit, RCC, or RCPO transactions to such merchant), and Payment Processor used by the prospective Higher Risk Client during the preceding two years, and all merchant identification numbers ("MIDs") used by any such banks or Payment Processors in connection with the prospective Higher Risk Client;

6. The prospective Higher Risk Client's past Chargeback Rate and Non-Credit Card Total Return Rate (if Defendant proposes to provide Payment Processing services for ACH Debit, RCC or RCPO transactions to such merchant) for the preceding three months, or for the preceding six months if the Higher Risk Client is a Covered Client, and estimates of future Chargeback Rates and Non-Credit Card Total Return Rates (if Defendant proposes to provide Payment Processing services for ACH Debit, RCC or RCPO transactions to such merchant);
 7. The names of bank references; and
 8. Whether the prospective Higher Risk Client, including the principal(s) and controlling Person(s) of the entity, any Person(s) with a majority ownership interest in the entity, and any corporate name, trade name, fictitious name or aliases under which such Person(s) do or have done business, has ever been:
 - a. placed in a payment card association's chargeback monitoring program;
 - or
 - b. the subject of a lawsuit brought by the Commission or any other state or federal law enforcement agency relating to consumer protection or telemarketing laws or regulations;
- B. Taking reasonable steps to assess the accuracy of the information provided pursuant to Section III.A of this Order, such as obtaining and reviewing representative samples of current marketing materials, including Internet websites, for those goods or services for which Defendant would provide the prospective Higher Risk Client with Payment Processing services or ISO services.

IV.

MONITORING OF HIGHER RISK CLIENTS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, and employees, 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, in connection with the Defendant's Payment Processing or acting as an ISO, are permanently restrained and enjoined from:

A. Failing to monitor the sales activity of all current Clients to identify Clients that should be designated as Higher Risk Clients requiring additional screening pursuant to Section III of this Order, and for those clients that become designated as Higher Risk, failing to either complete the reasonable screening process described in Section III of the Order or stop processing sales transactions and close all processing accounts within a one month period after Defendant knows, or should know, that such Client becomes designated as a Higher Risk Client;

B. Failing to monitor each Higher Risk Client's transactions to determine whether the Higher Risk Client is engaged in practices that are deceptive or unfair in violation of Section 5 of the FTC Act or the TSR. Such monitoring and determination shall include, but not be limited to, regularly reviewing Higher Risk Clients' Internet websites (either directly or by engaging a third party web crawling service), and regularly reviewing each Higher Risk Client's Chargeback Rates and Non-Credit Card Total Return Rates (if Defendant provides Payment Processing Services for ACH Debit, RCC or RCPO transactions), and reasons provided for these rates;

C. Failing to calculate and update at least on a monthly basis for each Higher Risk Client the Chargeback Rate and Non-Credit Card Total Return Rate (if Defendant provides

Payment Processing Services for ACH Debit, RCC or RCPO transactions). The Chargeback Rate and Non-Credit Card Total Return Rate shall be calculated separately for each payment mechanism processed, including ACH Debits, credit card transactions, RCCs, and RCPOs. For any Higher Risk Client with multiple processing accounts, the calculation of the Chargeback Rate and Non-Credit Card Total Return Rate shall be made for each of the Higher Risk Client's individual processing accounts, and in the aggregate for each Higher Risk Client;

D. Failing to immediately stop processing sales transactions and, as soon as practical but in no more than 5 days, close all processing accounts for:

1. Any Covered Client whose Non-Credit Card Total Return Rate exceeds two and one-half percent (2.5%) and whose total number of ACH Debit, RCC, or RCPO returned transactions in any month exceeds twenty (20) transactions (if Defendant provides Payment Processing Services for ACH Debit, RCC or RCPO transactions); and

2. Any Covered Client whose monthly Chargeback Rate exceeds one percent (1%) and whose total number of chargebacks exceeds fifty (50) per month in two of the past six months;

E. Failing to immediately commence a reasonable investigation of the cause of Non-Credit Card Total Return Rate (if Defendant provides Payment Processing Services for ACH Debit, RCC or RCPO transactions), or Chargeback Rates for:

1. Any Higher Risk Client, excluding Covered Clients, whose Non-Credit Card Total Return Rate exceeds two and one-half percent (2.5%) and whose total number of ACH Debit, RCC, or RCPO returned transactions in any month exceeds twenty (20)

transactions (if Defendant provides Payment Processing Services for ACH Debit, RCC or RCPO transactions); and

2. Any Higher Risk Client, excluding Covered Clients, whose monthly Chargeback Rate exceeds one percent (1%) and whose total number of chargebacks exceeds fifty (50) in two of the past six months;

3. For purposes of Section IV.E, “reasonable investigation” may include, but is not limited to: verifying and updating the truth and accuracy of information gathered in compliance with Section III of this Order and any other advertising of the Higher Risk Client reviewed by Defendant; confirming whether the Higher Risk Client has obtained required consumer authorizations for the challenged transactions; contacting financial institutions and Better Business Bureaus to gather detailed information, including complaints, regarding the Higher Risk Client; reviewing from an IP address that is not associated with Defendant the Internet websites used by the Higher Risk Client to market its goods and services; searching publicly available sources for legal actions taken by the Commission or other state or federal law enforcement agencies against the Higher Risk Client; and conducting “test” shopping to determine the Higher Risk Client’s sales practices, where possible;

4. Within sixty (60) days of commencing the investigation, Defendant shall stop processing sales transactions and close all processing accounts for any investigated Higher Risk Client unless Defendant drafts a written report establishing facts that demonstrate, by clear and convincing evidence, that the Higher Risk Client’s business practices related to the offer(s) for which Defendant provides Payment Processing are not deceptive or

unfair in violation of Section 5 of the FTC Act or in violation of the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.

F. Failing to immediately stop processing sales transactions and close all processing accounts for any Higher Risk Client that Defendant knows or should know is engaged in tactics to avoid fraud and risk monitoring programs established by any financial institution, acquiring bank, or the operators of any payment system, including, but not limited to, balancing or distributing sales transaction volume or sales transaction activity among multiple merchant accounts or merchant billing descriptors; splitting a single sales transaction into multiple smaller transactions, or using shell companies to apply for additional merchant accounts.

Nothing in this Section IV shall be read to insulate Defendant from liability for a violation of Section 5 of the FTC Act, the TSR, or any provision of this Order.

V.

MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$2.6 Million Dollars (\$2,600,000) is entered in favor of the Commission against Defendant as equitable monetary relief.

B. Defendant is ordered to pay to the Commission Seven Hundred and Fifty Thousand Dollars (\$750,000). Such payment must be made by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission, as follows: payment of \$375,000 within 30 days of entry of this Order; and payment of the balance \$375,000 by April 4, 2016. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

C. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statements and related documents (collectively, "Financial Representations") submitted to the Commission, namely the Financial Statement of the Defendant signed on October 6, 2015, together with all attachments thereto, including (a) the Financial Statements of Capital Payments, LLC d/b/a Bluefin Payment Systems for 2012 and 2013, and (b) the Consolidated Financial Statements for BPSH, LLC and Bluefin Payment Systems LLC for 2013, 2014, and 2015 year to date as of 5/31/2015.

D. The suspension of the judgment will be lifted against the Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the Financial Representations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due against the Defendant in the amount specified in Subsection A above, which the parties stipulate only for purposes of this Section represents the unjust enrichment alleged in the Complaint less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

F. Defendant relinquishes 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.

G. 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.

H. 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.

I. Defendant acknowledges that its Taxpayer Identification Number (Employer Identification Number), which Defendant previously submitted 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.

J. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer 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 redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VI.

PROHIBITION ON USE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant, whether acting directly or through any Person, subsidiary, division, or other device, is permanently restrained and enjoined from directly

or indirectly disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that Defendant obtained prior to entry of this Order in connection with providing Payment Processing services for The Tax Club, Inc., Manhattan Professional Group, Inc., 5410, Inc., Marble Base, Inc., Premier Coaching & Consulting, LLC, HB Marketing Services, LLC, and Tahuya, Inc.

Provided, however, that customer information may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:

A. Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who have 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 Defendant delivered a copy of this Order, the Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury and must:

1. Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant;
2. Identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
3. Describe the activities of each business, including the goods and services offered;
4. Describe in detail whether and how Defendant is in compliance with each Section of this Order; and
5. Provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 8 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Any designated point of contact; or
2. The structure of Defendant or any entity that Defendant has any ownership

interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or 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. Capital Payments, LLC.

IX.

RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for 8 years after

entry of the Order, and retain each such record for 5 years. Specifically, Defendant 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. Records of all refund and chargeback requests, whether received directly or indirectly, such as through a third party, and any response in connection with Payment Processing or acting as an ISO with respect to Higher Risk Clients; and
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

X.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order, including 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, 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 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 Defendant or any individual or entity affiliated with Defendant, 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.

XI.

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.

Case closed, subject to the terms of this Agreement.

SO ORDERED this 3rd day of February, 2016.

s/ Arthur D. Spatt


Arthur D. Spatt
United States District Judge

SO STIPULATED AND AGREED:

FOR PLAINTIFF:


FEDERAL TRADE COMMISSION



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Savvas S. Diacosavvas
Brian N. Lasky
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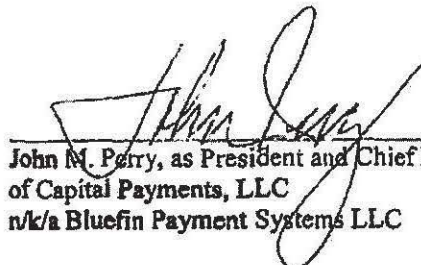
Date: 2/2/16

FOR DEFENDANT:



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COUNSEL for Capital Payments, LLC
n/k/a Bluefin Payment Systems LLC

Date: _____



John M. Perry, as President and Chief Executive Officer
of Capital Payments, LLC
n/k/a Bluefin Payment Systems LLC

Date: 1/11/16