

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DATE #:
DATE: 1/29/16

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 16-cv-206-JSR

TOP SHELF MARKETING CORP., a New Jersey corporation,

STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO
DEFENDANTS VIXOUS
MERCHANT SERVICES, LLC
AND DAVID VANKOMEN

RELIABLE BUSINESS CONSULTANTS, LLC,
also doing business as ONLINE COMMERCE
PROS, a New York limited liability company,

CREATIVE BUSINESS SETUP, LLC, a Utah
limited liability company,

LEGAL ENTITY PROVIDERS, LLC, a Utah
limited liability company,

POWER HOUSE DATA INC., a New Jersey
corporation,

UNITED BUSINESS 101, LLC, a New York
limited liability company,

VIXOUS MERCHANT SERVICES, LLC, also
doing business as VIXOUS PAYMENTS, a Utah
limited liability company, and KEYBANCARD,
LLC, as a successor limited liability company,

ANTHONY FIORE, individually and as an officer
and owner of RELIABLE BUSINESS
CONSULTANTS, LLC and POWER HOUSE
DATA, INC. and as an officer of TOP SHELF
MARKETING CORP.,

JOSEPH GOVERNARA, also known as JOE
MORRIS, individually and as owner of UNITED

BUSINESS 101 and an officer and owner of
RELIABLE BUSINESS CONSULTANTS, LLC,

RYAN HULT, individually and as an officer and
owner of TOP SHELF MARKETING CORP. and a
principal of RELIABLE BUSINESS
CONSULTANTS, LLC,

DAVID MERHI, individually and as an officer and
owner of CREATIVE BUSINESS SETUP LLC,
owner of LEGAL ENTITY PROVIDERS, LLC,
officer of TOP SHELF MARKETING CORP., and
principal of RELIABLE BUSINESS
CONSULTANTS, LLC, and

DAVID VANKOMEN, individually and as a
principal of VIXOUS MERCHANT SERVICES,
LLC,

Defendants.

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed its Complaint for Permanent Injunction and Other Equitable Relief ("Complaint"), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b. The Commission and Defendants Vixous Merchant Services, LLC and David VanKomen ("Settling Defendants") 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 Settling Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's trade regulation rule entitled Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, by their involvement in a credit card laundering scheme where they helped set up merchant accounts linked to shell companies that were used to process sales transactions for other entities.
3. Settling Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. *The parties are agreed that the court has personal and subject matter jurisdiction.* ~~Only for purposes of this action, Settling Defendants admit the facts necessary to establish jurisdiction.~~
4. Settling Defendants waive any claim that they 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 agree to bear their own costs and attorney fees.
5. Settling Defendants and the Commission waive 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. "Acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates

or licenses a credit card system (e.g. Visa, MasterCard, American Express, and Discover) to authorize Merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

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 (a) who obtains, directly or indirectly, from any Settling Defendant a merchant account that enables the acceptance of payments from a consumer for goods, services, or charitable donations; or (b) for whom any Settling Defendant acts as a Sales Agent, either directly or indirectly.

6. "Corporate Defendant" means Vixous Merchant Services, LLC., also doing business as Vixous Payments, and KeyBancard, LLC, as its successor, and their successors and assigns.

7. "Credit Card Laundering" means:

(a) Presenting or depositing into, or causing or allowing another to present or deposit into, the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant;

(b) Employing, soliciting, or otherwise causing or allowing a Merchant, or an

employee, representative, or agent of a Merchant, to present to or deposit into the credit card system for payment, a Credit Card Sales Draft generated by a transaction that is not the result of a credit card transaction between the cardholder and the Merchant; or

(c) Obtaining access to the credit card system through the use of a business relationship or an affiliation with a Merchant, when such access is not authorized by the Merchant Account agreement or the applicable credit card system.

8. **"Credit Card Sales Draft"** means any record or evidence of a credit card transaction.

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. **"Individual Defendant"** means David VanKomen.

11. **"Merchant"** means a Person who is authorized under a written contract with an Acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of good or services.

12. **"Merchant Account"** means an account with an Acquirer that authorizes and allows a Merchant to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

13. **"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.

14. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any product or service, a provision under which the consumer’s silence or failure to take an affirmative action to reject products or services or to cancel the agreement is interpreted by the Client, seller, or merchant as an acceptance of the offer. Offers or agreements with Negative Option Features include, but are not limited to: (a) free or introductory price trial offers in which the consumer receives a product or service for free or at a nominal or introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the product or service if he or she does not take affirmative action to cancel, reject, or return the product or service before the end of that period; (b) continuity plans in which, subsequent to the consumer’s agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (c) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

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

16. **“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.

17. **“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.

18. **“Person”** means any natural person or any entity, corporation, partnership, or association of persons.

19. **“Remotely Created Check”** 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.

20. **“Remotely Created Payment Order”** 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.

21. "Sales Agent" means a Person that matches, arranges, or refers prospective Clients or Clients to a Payment Processor or ISO for Payment Processing. As such, a Sales Agent may be involved in recommending a particular Payment Processor or ISO to a prospective Client, forwarding to the Payment Processor or ISO a prospective Client's or Client's merchant application, or negotiating rates and fees charged by a Payment Processor or ISO, but a Sales Agent may not be involved in any Payment Processing and may not act as an ISO.

22. "Settling Defendants" means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.

23. "Total Return Rate" means the proportion (expressed as a percentage) of all attempted ACH Debit, 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.

ORDER

I.

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

IT IS ORDERED that Settling Defendants, whether acting directly or through an intermediary, are hereby permanently restrained and enjoined from Payment Processing or acting as an ISO.

II.

**PROHIBITION ON ACTING AS A SALES AGENT
FOR HIGH RISK CLIENTS**

IT IS FURTHER ORDERED that Settling Defendants, whether acting directly or through an intermediary, are permanently restrained and enjoined from acting as a Sales Agent for any Client:

A. Offering to sell, selling, promoting or marketing the following goods or services: (1) Money Making Opportunity; (2) goods or services with a Negative Option Feature; (3) credit card or identity theft protection services; (4) timeshare resale services; (5) buying clubs; and/or (6) medical discount membership plans;

B. Engaged in Outbound Telemarketing; or

C. 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, or Credit Card Laundering, provided that Defendants are able to access that MATCH list themselves or through an ISO, Payment Processor, acquiring bank, or

other financial institution.

III.

PROHIBITION AGAINST CREDIT CARD LAUNDERING

IT IS FURTHER ORDERED that Settling Defendants, Settling 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, in connection with a Merchant Account are permanently restrained and enjoined from Credit Card Laundering.

IV.

REASONABLE SCREENING OF PROSPECTIVE CLIENTS

IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants' 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 acting as a Sales Agent for any prospective Client without first engaging in a reasonable screening of the prospective Client to determine whether the prospective Client's business practices are, or are likely to be, deceptive or unfair within the meaning of Section 5 of the FTC Act. Such reasonable screening shall include, but not be limited to:

A. Obtaining from each prospective Client:

1. A description of the nature of the prospective Client's business, including describing the nature of the goods and services sold for which the prospective 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 Client has marketed or intends to market the goods and services for which the prospective Client seeks Payment Processing services;
4. Each physical address at which the prospective Client has conducted or will conduct the business(es) identified pursuant to subsection (1) of this Section IV.A;
5. The name and address of every bank and Payment Processor used by the prospective 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 Client;
6. The prospective Client's past Chargeback Rate, Total Return Rate, and estimates of future Chargeback Rates and Total Return Rates;
7. The names of bank references; and
8. Whether the prospective Client, including the principal(s) and controlling person(s) of the entity, person(s) who have 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 complaint filed by the Commission or any other state or federal law enforcement agency;

B. Taking reasonable steps to assess the accuracy of the information provided pursuant to Section IV.A of this Order, including reviewing the Internet websites used by the prospective Client to market its goods or services, and obtaining and reviewing copies of monthly Payment Processing statements issued by any bank and Payment Processor used by the prospective Client during the preceding six (6) months; and

C. Obtaining and reviewing all current marketing materials for each good or service related to the offer for which the Defendants would provide Sales Agent services for the prospective Client.

V.

MONETARY JUDGMENT AND SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$5.125 Million Dollars (\$5,125,000) is entered in favor of the Commission against the Settling Defendants, jointly and severally, as equitable monetary relief. The judgment is suspended, subject to the Subsections below.

B. The Commission's agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of the Settling Defendants' sworn financial statements and related documents (collectively, "Financial Representations") submitted to the Commission, namely:

1. the Financial Statement of Individual Defendant Van Komen signed on August 21, 2015, including the attachments;
2. the Financial Statement of the Corporate Defendant Vixous Merchant

Services signed by David Van Komen, Member, on October 2, 2015, including the attachments;

3. the additional documentation submitted by email from Defendants' counsel Mark Shurtleff to Commission counsel dated October 9, 2015, attaching bank statements for KeyBancard LLC and Rebounders LLC; and

4. the additional documentation submitted by email from Defendants' counsel Mark Shurtleff to Commission counsel dated October 12, 2015, attaching Individual Defendant Van Komen's 2013 and 2014 Tax Returns.

C. The suspension of the judgment will be lifted as to any Settling Defendant if, upon motion by the Commission, the Court finds that Settling 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.

D. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Settling Defendant in the amount specified in Subsection V.A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

VI.

ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. Settling 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.

B. 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.

C. 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.

D. Settling Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Settling Defendants 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.

E. 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 Settling Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Settling Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VI.

CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Settling Defendants, Settling 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, are permanently restrained and enjoined from directly or indirectly:

A. 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 any Settling Defendant obtained prior to entry of this Order in connection with providing *Payment Processing* services to Defendants; and

B. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

VII.

COOPERATION

IT IS FURTHER ORDERED that Settling Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Settling

Defendants must provide truthful and complete information, evidence, and testimony. The Individual Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

VIII.

ORDER ACKNOWLEDGMENTS

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

A. Each Settling 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 10 years after entry of this Order, the Individual Defendant for any business that he, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and the Corporate 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 participate in 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 Settling Defendant delivered a copy of this Order, that Settling Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX.

COMPLIANCE REPORTING

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

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

1. Each Settling Defendant must: (a) 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 that Settling Defendant; (b) identify all of that Settling Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which the Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Settling Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, the Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation,

authority, control, and any ownership.

B. For 10 years after entry of this Order, each Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Settling Defendant must report any change in: (a) any designated point of contact; or (b) the structure of the Corporate Defendant or any entity that such Settling 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.

2. Additionally, the Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Settling 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. Vicious Merchant Services, LLC., et al.

X.

RECORDKEEPING

IT IS FURTHER ORDERED that Settling Defendants must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, the Corporate Defendant and the Individual Defendant for any business that he, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, 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 consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique contract with any payment processor or lead broker.

XI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring the Settling Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended 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 Settling 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 Settling Defendant. Settling Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Settling 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 the Settling Defendants or any individual or entity affiliated with the Settling 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.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning the Individual Defendant, pursuant to

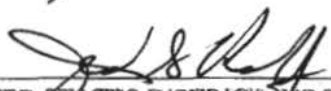
Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED ^{and agreed by all parties} that this Court retains jurisdiction of this matter for purposes ^{all} of construction, modification, and enforcement of this ~~Order~~.

SO ORDERED this 28th day of January, 2016


UNITED STATES DISTRICT JUDGE

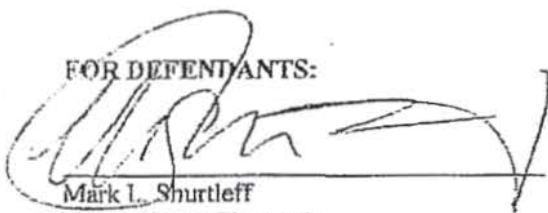
SO STIPULATED AND AGREED:

FOR PLAINTIFF:


FEDERAL TRADE COMMISSION


Darren H. Lubetzky
Savvas S. Diacosavvas
Karen V. Goff
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COUNSEL for David VanKomen and Vixous Merchant Services LLC

Date: 10/23/15


DAVID VANKOMEN
Individually and as an officer of Vixous Merchant Services, LLC.

Date: 10-23-15