

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

QUALPAY, Inc. a Delaware corporation

Defendant

Case No. _____

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

Plaintiff, the Federal Trade Commission (“FTC” or the “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief against Defendant Qualpay, Inc. (“Qualpay”). The Commission and Defendant stipulate to the entry of this 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 participated in unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), by processing or arranging for processing of charges to consumers’ credit and debit cards on behalf of Defendant’s clients.

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 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, Inc., Mastercard Inc., American Express Company, and Discover Financial Services, Inc.) 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. **“Business Coaching Program”** means any program, plan, or product, including those related to work-at-home opportunities, that is represented, expressly or by implication,

to train or teach a participant or purchaser how to establish a business or earn money or other consideration through a business or other activity.

4. **“Card-Not-Present Transaction”** means a debit or credit card transaction whereby the Person’s debit or credit card is not physically swiped, scanned, imprinted, or accepted using near-field communication or similar device-present technology.

5. **“Chargeback Rate”** means the proportion (expressed as a percentage) of Chargebacks out of the total number of credit or debit card sales transactions.

6. **“Chargeback”** means a procedure where: (a) a consumer requests that the consumer’s issuing bank charge all or part of an amount of a Person’s credit or debit card transaction back to the merchant who initiated the charge; and (b) that request is transmitted through the credit card network to a merchant.

7. **“Client”** means any Person (a) who obtains, directly or indirectly, from any Defendant a Merchant Account, or (b) to whom any Defendant provides any Payment Processing services.

8. **“Covered Client”** means any Client who offers to sell, sells, promotes, or markets, the following goods or services: continuity programs with negative option features, Multi-Level Marketing Programs, nutraceuticals with negative-option features, scholarship finding services, stored value cards, Outbound Telemarketing, credit restoration, debt consolidation, extended warranty programs, government grants, and mortgage loan modification.

9. **“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.

10. **“Credit Card Sales Draft”** means any record or evidence of a credit card transaction.

11. **“Defendant”** means Qualpay, Inc.

12. **“Financial Institution”** means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)). An institution that is significantly engaged in financial activities is a Financial Institution.

13. **“High 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 twenty-five percent (25%) Card-Not-Present Transactions; or (b) more than two hundred thousand dollars (\$200K) in total Card-Not-Present Transactions on an annual basis; or (c) is a Covered Client; provided, however that High Risk Client shall not mean any Client who (1) is a government entity; (2) is a public utility; (3) is a residential or

commercial building maintenance business (e.g., garbage or waste removal, pest services, cleaning services, or landscaping services); or (4) is a company that predominantly sells oil, gas, or propane. The term “High Risk Client” shall also not include any entity whose business relationship with Defendant is limited to Defendant providing Software as a Service platforms to the entity for operating business-to-business transactions (e.g. accounting, invoicing platforms, or client management relationship platforms).

14. **“Independent Sales Organization” or “ISO”** means any Person that (a) enters into an agreement or contract with a Payment Processor, Acquirer or Financial Institution to sell or market Payment Processing services to a Merchant; (b) matches, arranges for, or refers Merchants to a Payment Processor or Acquirer for Payment Processing services, or that matches, arranges for, or refers a Payment Processor or Acquirer to Merchants for Payment Processing services; or (c) is registered as an ISO or merchant service provider (“MSP”) with VISA, Mastercard, or any credit card association.
15. **“Merchant”** means a person who is authorized under a written contract with a Payment Processor 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.
16. **“Merchant Account”** means any account with an Acquirer or other Financial Institution, service provider, Payment Processor, ISO, or other entity that enables an individual, a business, or other organization to accept payments of any kind.
17. **“Money-Making Method”** means any method, process, or technique that is offered, offered for sale, or sold, based wholly or in part on representations, either express or

implied, that such method, process, or technique is non-generic or not generally available to the public, and will generate income for users or prospective purchasers.

18. **“Multi-Level Marketing Program”** means any business in which participants pay money or purchase products or services in return for which the participants obtain the right to (1) recruit others into the program or have others placed in the participant’s downline and (2) receive payment or other compensation that is based, in whole or in part, upon purchases, sales, or any other activities of the participant’s downline. Downline refers to the collection of participants whom a participant has personally recruited (first level), any participants and customers recruited by first level participants (second level), any participants and customers recruited by second level participants (third level), and so forth, however denominated.

19. **“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 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.

20. **“Outbound 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 initiated by a person other than the consumer, whether or not covered by the Telemarketing Sales Rule.
21. **“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 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 Acquirers or other Financial Institutions; (c) clearing, settling, or distributing proceeds of sales transactions from Acquirers or Financial Institutions to merchants; or (d) processing Chargebacks or ACH Debits.
22. **“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 donation.
23. **“Person”** means any natural person or any entity, corporation, partnership, or association of persons.
24. **“Prevented Chargeback”** means a consumer initiated chargeback that is resolved by

the merchant issuing the consumer a refund before the chargeback is transmitted through the credit card network.

25. **“Qualpay”** means Qualpay, Inc. and its successors and assigns.

26. **“Sales Agent”** means a Person that matches, arranges, or refers prospective Clients or Clients to a Payment Processor or ISO for Payment Processing, but does not hold any contractual liability in the event of losses related to the Payment Processing activities conducted by or on behalf of Clients. 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.

ORDER

I.

BAN ON PROCESSING FOR CERTAIN MERCHANT CATEGORIES

IT IS ORDERED that Defendant, whether acting directly or through an intermediary, is hereby permanently restrained and enjoined from Payment Processing or acting as an ISO or Sales Agent for any Person:

A. Offering to sell, selling, promoting or marketing Business Coaching Programs or Money Making Methods; or

B. Listed on the MasterCard Member Alert to Control High-Risk Merchants (MATCH) list for any of the following reasons: excessive chargebacks of fraud, identification as a Questionable Merchant per the MasterCard Questionable Merchant Audit

Program, merchant collusion, illegal transactions, or Credit Card Laundering, provided that Defendant is able to access that MATCH list itself or through an ISO, Payment Processor, Acquirer, or other Financial Institution.

II.

PROHIBITIONS RELATED TO MERCHANT ACCOUNTS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, servants, 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:

A. Making, or assisting others in making, directly or by implication, any false or misleading statement in order to obtain Payment Processing services; and

B. Engaging in any tactics to avoid fraud and risk monitoring programs established by any Financial Institution or Acquirer that sponsors Defendant, 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; using a shell company to apply for an additional Merchant Account; or attempting to reduce excessive Chargeback Rates through the use of services that allow merchants to create Prevented Chargebacks without also assessing the cause of the excessive Chargeback Rate.

III.

PROHIBITION AGAINST ASSISTING AND FACILITATING

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, servants, 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 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; or
- D. Any deceptive, unfair, or abusive act or practice prohibited by Section 5 of the FTC Act or by the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

IV.

SCREENING OF PROSPECTIVE HIGH RISK CLIENTS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, servants, 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 Payment Processing or acting as an ISO or Sales Agent for any prospective High Risk Client without first engaging in a reasonable screening

of the prospective High Risk Client to determine whether the prospective High 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 High Risk Client:
 1. A description of the nature of the prospective High Risk Client's business, including describing the nature of the goods and services sold and methods of sale;
 2. Each physical address at which the prospective High Risk Client has conducted business or will conduct business;
 3. A list of all Internet websites, the content of which is designed or controlled by the prospective High Risk Client, under or through which the prospective High Risk Client has marketed or intends to market the goods and services for which the prospective High Risk Client seeks Payment Processing services;
 4. The names of trade and bank references;
 5. The name and address of every Payment Processor used by the prospective High Risk Client during the preceding two years;
 6. The prospective High Risk Client's past Chargeback Rate for the preceding three (3) months, or for the preceding six (6) months if the High Risk Client is a Covered Client, and estimates of future Chargeback Rates;
 7. The name of: (a) the principal(s) and controlling person(s) of the entity; (b) person(s) with a 25% majority ownership interest in the entity; and (c) any

corporate names, business names, trade names, fictitious names, DBAs, or aliases under which such persons have conducted business; and

8. Whether the prospective High Risk Client or any of the persons or entities identified in response to Section IV(A)(7) have 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 Sections IV.A of this Order, including but not limited to: reviewing the Internet websites, the content of which is designed or controlled by the prospective High Risk Client, used by the prospective High Risk Client to market its goods or services; obtaining and reviewing copies of monthly Payment Processing statements issued by any bank, ISO, Sales Agent, Acquirer, or Payment Processor used by the High Risk Client during the preceding three (3) months, or for the preceding six (6) months if the High Risk Client is a Covered Client; and obtaining and reviewing all current marketing materials for each good or service related to the offer for which Defendant would provide the prospective High Risk Client with Payment Processing, ISO, or Sales Agent services; reviewing the Better Business Bureau ratings of the prospective High Risk Client; and reviewing internet search results related to the prospective High Risk Client. The purpose of such steps is to determine whether the prospective High Risk Client is engaged in any of the following acts or practices, in which case Defendant shall not provide Payment Processing or act as an ISO or Sales Agent for the prospective High Risk Client:

1. Failing to clearly and conspicuously disclose all products and services that are sold in conjunction with the offered product or service, and the total cost to purchase, receive, or use, any products or services that are the subject of the sales offer;
2. Misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sales offer;
3. Failing to clearly and conspicuously disclose all material terms and conditions of an offer;
4. Misrepresenting, expressly or by implication, any material aspect of the prospective High Risk Client's refund, cancellation, exchange, or repurchase policies; and
5. Causing billing information to be submitted for payment without the customer's express authorization.

V.

MONITORING OF HIGH RISK CLIENTS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, servants, 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 Payment Processing or acting as an ISO or Sales Agent, 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 High Risk Clients requiring additional screening pursuant to Section V of this Order, and for those clients that become designated as High Risk, failing to complete the reasonable screening process described in Section V of the Order within a one month period;

B. Failing to monitor each High Risk Client's transactions to determine whether the High Risk Client is engaged in practices that are deceptive or unfair in violation of Section 5 of the FTC Act. Such monitoring shall include, but not be limited to: regularly reviewing High Risk Clients' Internet websites, the content of which is designed or controlled by the prospective High Risk Client, including from an IP address that is not associated with Defendant; regularly reviewing each High Risk Client's Chargeback Rates as well as examining any unusual or suspect transaction patterns, values, and volume and reasons provided for these rates; regularly reviewing High Risk Client's Better Business Bureau ratings; and regularly reviewing internet search results related to the High Risk Client,

C. Failing to calculate and update at least on a monthly basis for each High Risk Client the Chargeback Rate. For any High Risk Client with multiple Merchant Accounts, the calculation of the Chargeback Rate shall be made for each of the High Risk Client's individual Merchant Accounts, and in the aggregate for each High Risk Client;

D. Failing to immediately stop processing sales transactions for:

1. 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; and

2. Any Covered Client engaged in tactics to avoid fraud and risk monitoring programs established by any Financial Institution or Acquirer sponsoring Defendant, 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.

E. Failing to immediately conduct a reasonable investigation of the cause Chargeback Rates for:

1. Any High 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.

2. Reasonable investigation as defined in this section includes, but is not limited to: verifying and updating the truth and accuracy of information gathered in compliance with Section IV of this Order and any other advertising of the High Risk Client; confirming that the High Risk Client has obtained required consumer authorizations for the transactions; contacting Financial Institutions and Better Business Bureaus to gather detailed information, including complaints and other relevant information, regarding the High Risk Client; reviewing from an IP address that is not associated with Defendant the

Internet websites, the content of which is designed or controlled by the prospective High Risk Client, used by the High 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 High Risk Client; and conducting “test” shopping to determine the High Risk Client’s sales practices, where possible; and obtaining the number and rate of Prevented Chargebacks per month for the last six months.

4. Within 60 days of commencing the investigation, Defendant shall stop processing sales transactions for any investigated High Risk Client unless Defendant drafts a written report establishing facts that clearly demonstrate that the High 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 for any High Risk Client that Defendant knows or should know is engaged in tactics to avoid fraud and risk monitoring programs established by any Financial Institution, Acquirer, 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; using shell companies to apply for additional Merchant Accounts; or attempting to reduce excessive Chargeback Rates through the use of services that allow merchants to create Prevented Chargebacks without also assessing the cause of the excessive Chargeback Rate.

VI.

MONETARY JUDGMENT AND SUSPENSION

A. Judgment in the amount of \$46,779,358.91 (Forty Six Million, Seven Hundred Seventy Nine Thousand, Three Hundred Fifty Eight Dollars and Ninety One Cents) is entered in favor of the Commission against Defendant.

B. The judgment is suspended, subject to the Subsections below.

C. The Commission's agreement to the suspension 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:

1. The Financial Statement of Defendant signed by Craig Gass on February 20, 2020.
2. Additional information submitted via email from Defendant's attorney Theresa Kananen to Commission counsel Benjamin R. Davidson on October 11, 2019.

D. The suspension of judgment will be lifted as to 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 judgment is lifted, the judgment becomes immediately due as to Defendant in the amount specified in Subsection A above (which the parties stipulate 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 the Order.

VII.

ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. 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.

B. Defendant relinquishes all legal and equitable right, title and interest in the \$6,314,342.09 in funds that Defendant previously turned over to the Receiver, Mark J. Bennett, pursuant to the August 8, 2018 order entered in *FTC v. MOBE Ltd, et al*, 6:18-cv-862-ORL-37DCI.

C. 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.

D. 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.

E. Defendant acknowledges that the Taxpayer 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.

F. 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.

VIII.

CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from directly or indirectly failing to provide sufficient consumer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendant must provide it, in the form prescribed by the Commission, within 14 days.

IX.

COOPERATION

IT IS FURTHER ORDERED that Defendant 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.

Defendant must provide truthful and complete information, evidence, and testimony.

Defendant must appear and Defendant must cause its officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon five (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.

X.

ORDER ACKNOWLEDGMENTS

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

A. Defendant, within seven (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 fifteen (15) years after entry of this Order, Defendant for any business that Defendant is the majority owner of or directly or indirectly controls must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC members and managers; (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 seven (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, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt

of this Order.

XI.

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:

1. 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 Defendant; (b) identify all of 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; (d) describe in detail whether and how 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.

B. For fifteen (15) years following 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. Defendant must report any change in: (a) any designated point of contact; or (b) 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 such 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. Qualpay, Matter No. 1923101.

XII.

RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, for any business that Defendant 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. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

XIII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's 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, 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.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

XIV.

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 _____, 2020.

United States District Judge

The parties, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof.

FOR THE DEFENDANT:



Dated: February 21, 2020

Edward A. Marshall
Theresa Y. Kananen
ARNALL GOLDEN GREGORY LLP
171 17th Street, NW Suite 2100
Atlanta, Georgia 30363

Counsel for Qualpay, Inc.

FOR PLAINTIFF, THE FEDERAL TRADE COMMISSION:

ALDEN F. ABBOTT
FEDERAL TRADE COMMISSION,
General Counsel



Dated: May 28, 2020

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