

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
APPLIED CARD SYSTEMS, INC.,	)	
Delaware Corporation and	)	
	)	
APPLIED CARD SYSTEMS OF	)	FILE NO. 032-3040
PENNSYLVANIA, INC.,	)	
Pennsylvania Corporation.	)	
	)	
	)	

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of Applied Card Systems, Inc. and Applied Card Systems of Pennsylvania, Inc. (collectively "Proposed Respondents"). Proposed Respondents, having been represented by counsel, have agreed to enter into this agreement containing a consent order ("order") resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between Applied Card Systems, Inc. and Applied Card Systems of Pennsylvania, Inc., by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Respondent Applied Card Systems, Inc. is a Delaware corporation with an office and its principal place of business located at 4700 Exchange Court, Boca Raton, Florida 33431.
2. Respondent Applied Card Systems of Pennsylvania, Inc. is a Pennsylvania corporation with an office and place of business located at 50 Applied Card Way, Glenn Mills, Pennsylvania 19342.
3. Proposed Respondents admit all the jurisdictional facts set forth in the draft complaint.
4. Proposed Respondents waive:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

5. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

6. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final and effective upon service. Delivery of the complaint and the decision and order to the addresses of Proposed Respondents as stated in this Agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the Agreement may be used to vary or contradict the terms of the order.

8. Proposed Respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

### **ORDER**

**IT IS ORDERED** that for purposes of this order, the following definitions shall apply:

1. "Respondents" mean Applied Card Systems, Inc. and Applied Card Systems of Pennsylvania, Inc., their successors, assigns, officers, directors, employees and agents.

2. “Collection of debts” means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due.

3. “Consumer” means any natural person obligated or allegedly obligated to pay any debt.

4. “Delinquent debt” means any obligation or alleged obligation of a Consumer to pay money that is contractually past due, arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

5. “Location information” means a Consumer’s place of abode and his or her telephone number at such place, or his or her place of employment.

6. “Third Party” means any person or entity that is not a Consumer including, but not limited to, any parent of a non-minor Consumer, or any child, relative, neighbor, co-worker or employer of a Consumer.

## INJUNCTIVE PROVISIONS

### I.

**IT IS THEREFORE ORDERED** that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of any delinquent debt, shall not engage in any unfair or deceptive act or practice in violation of Section 5 of the FTC Act including, but not limited to:

A. Communicating with any Third Party, for the purpose of acquiring location information about the Consumer, more than once unless requested to do so by such person or unless Respondents reasonably believe that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.

B. Engaging in any conduct the natural consequence of which is to annoy, abuse or harass any person including, but not limited to:

1. Using obscene or profane language or language the natural consequence of which is to abuse the hearer; or

2. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

**II.**

**IT IS FURTHER ORDERED** that Respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of any delinquent debt, are hereby prohibited from:

A. Communicating with any Consumer, in connection with the collection of any delinquent debt, without the prior consent of the Consumer given directly to Respondents or the express permission of a court of competent jurisdiction:

1. At any unusual time or place or a time or place known to be inconvenient. In the absence of knowledge of circumstances to the contrary, Respondents shall assume that the convenient time for communicating is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time of the person called; and

2. At any Consumer's place of employment if Respondents know or have reason to know that the Consumer's employer prohibits the receipt of such communication; and

3. If Respondents know the Consumer is represented by an attorney with respect to such debt and have knowledge of, or can readily ascertain from the Consumer or the Consumer's attorney, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the Respondents or unless the attorney consents to direct communication with the Consumer. Provided, however, this provision does not prohibit Respondents from mailing, directly to the Consumer, periodic billing statements, as required by the Truth in Lending Act, 15 U.S.C. § 1637(b) and the Fair Credit Billing Act, 15 U.S.C. § 1666-1666j. All other communication with the Consumer in violation of this part shall be suspended within a commercially reasonable period of time, not to exceed five (5) business days.

B. Communicating, except as permitted in subpart I.A., without the prior consent of the Consumer given directly to the Respondents, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, with any person other than a Consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the Respondents' attorney, or any individual or business entity used by Respondents in the normal course of business for the purpose of collecting delinquent debts. For purposes of subparts II.A. and II.B., the term "Consumer" includes the Consumer's spouse, parent (if the Consumer is a minor) guardian, executor, or administrator.

C. Using any false, deceptive, or misleading representation or means including, but not limited to:

1. The false representation of the character, amount, or legal status of any debt;
2. The threat to take any action that cannot legally be taken or that is not intended to be taken; and
3. Any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a Consumer.

D. Collecting or attempting to collect any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

E. If any Consumer owes multiple debts and makes any single payment to Respondents with respect to such debts, applying such payment to any debt which is disputed by the Consumer. Where applicable, Respondents shall apply such payment in accordance with the Consumer's directions.

### **III. DISTRIBUTION OF ORDER BY RESPONDENTS**

**IT IS FURTHER ORDERED** that Respondents, their successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees and agents having responsibilities with respect to the subject matter of this order, and shall create and maintain appropriate records to evidence the delivery of this order to each such persons specified herein. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

### **IV. MONITORING COMPLIANCE OF PERSONNEL**

**IT IS FURTHER ORDERED** that for a period of three (3) years from the date this order becomes final, in connection with any business operated by Respondents which is engaged in the collection of delinquent debts, Respondents shall:

A. Take reasonable steps sufficient to monitor and ensure that all of Respondents' employees and agents engaged in the collection of delinquent debts comply with parts I and II of this order. Such steps shall include, at a minimum, the following:

1. Listening regularly to a selection of communications relating to the collection of delinquent debts made by Respondents' employees and agents to Consumers and Third Parties;
2. Establishing and following a procedure for receiving and responding to

complaints received by Respondents relating to the collection of delinquent debts; and

3. Ascertaining, when a collection complaint is received by Respondents, the number and nature of complaints received regarding any employee or agent engaged in the collection of debts who is involved in the complained about transaction or communication;

B. Promptly investigate any collection complaint received by Respondents;

C. Take appropriate corrective action with respect to any officer, manager, employee, or agent of Respondents' who, as determined by either Respondent, is not complying with this order. Corrective action may include training, warning, disciplining, or terminating such officer, manager, employee or agent; and

D. Promptly document the results of each collection complaint investigation conducted by Respondents and any corrective action taken, as set forth in part V.

## V. RECORD KEEPING PROVISIONS

**IT IS FURTHER ORDERED** that Respondents and their successors and assigns, for a period of three (3) years from the date this order becomes final, with respect to Respondents' businesses and any other business entity owned by each Respondent that is engaged in the collection of delinquent debts, shall create, maintain, and upon request, make available to the Federal Trade Commission for inspection and copying:

A. Personnel records accurately reflecting: the name, address, and telephone number of each person engaged in the collection of delinquent debts, including any independent contractor; that person's job title or position; the date upon which the person commenced working; and the date and reason for the person's termination, if applicable;

B. Records that evidence the delivery of this order to all principals, officers, directors, managers, employees, and agents having responsibility with respect to the subject matter of this order, as required by part III;

C. Copies of all scripts, training manuals, and any other materials used by Respondents to train and evaluate the job performance of their employees engaged in the collection of delinquent debts; and

D. Records regarding complaints relating to the collection of delinquent debts, including, but not limited to: (1) each complaint letter or other form of written communication received by Respondents; (2) telephone complaints received by Respondents from Third Parties; (3) nature of the complaint and a description of the alleged conduct, as reflected in any written records pertaining to such complaints; (4) name and position of each employee, where possible,

whose conduct is the subject of the complaint; (5) disposition of any complaint, including records of all contacts with the complainant regarding the complaint; and (6) any action taken to correct alleged conduct that violates this order.

## VI. COMPLIANCE REPORTING BY RESPONDENTS

**IT IS FURTHER ORDERED** that Respondents and their successors and assigns shall:

A. Notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that with respect to any proposed change in the corporation(s) about which Respondents learn less than thirty (30) days prior to the date such action is to take place, Respondents shall notify the Commission as soon as practicable after obtaining such knowledge. All notices required by this part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20589.

B. Within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to subpart A. above; and
2. Copies of the records that were created and maintained pursuant to part III to evidence Respondents' dissemination of this order.

*Provided, further,* for purposes of the compliance reporting required by this part, the Commission is authorized to communicate directly with Respondents.

## VII. SUNSET PROVISION

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

- A. Any part in this order that terminates in less than twenty (20) years;

B. This order's application to any Respondent that is not named as a Respondent in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this part.

*Provided, further,* that if such complaint is dismissed or a federal court rules that the Respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.



Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Applied Card Systems, Inc. and  
Applied Card Systems of Pennsylvania, Inc.

By: \_\_\_\_\_  
Rocco A. Abessinio  
Chief Executive

\_\_\_\_\_  
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Federal Trade Commission

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