

1
2
3
4
5
6
7
8
9
10
11
12
13

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INTERBILL, LTD., and THOMAS WELLS,
individually and as officer or director of
Interbill,

Defendants.

Case No. CV-S-06-01644-JCM-PAL

**STIPULATED FINAL JUDGMENT,
ORDER FOR COMPENSATORY
CONTEMPT RELIEF, AND
SUPPLEMENTAL ORDER FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF AS
TO DEFENDANTS THOMAS
WELLS, INTERBILL, LTD., AND ITS
SUCCESSOR, PRIORITY PAYOUT
CORP.**

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed a complaint against Thomas Wells (“Wells”) and Interbill Ltd. (“Interbill”) in this Court on December 26, 2006, alleging that Wells and Interbill engaged in unauthorized debiting of consumers’ checking accounts in violation of Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a). On April 20, 2009, this Court granted the FTC’s Motion for Summary Judgment and entered a Final Judgment and Order for Permanent Injunction and Other Equitable Relief against Wells and Interbill (“2009 Order”) (ECF No. 42), attached as Exhibit A. The Commission, Defendants Wells and Interbill, and Priority Payout Corp. (“Priority”), a successor for Interbill (collectively, with Wells and Interbill, “Defendants”), stipulate to the entry of this Stipulated Final Judgment, Order for Compensatory Contempt Relief, and Supplemental Order for Permanent Injunction and Other Equitable Relief (“Order”). This Order supersedes the 2009 Order with the exception of the Findings and Section IV of the 2009 Order, titled “Consumer Redress,” which remain in effect and are not altered in any way by this Order.

THEREFORE IT IS ORDERED as follows:

FINDINGS

1
2 1. This Court has jurisdiction over this matter.

3 2. The FTC alleges that Defendants have violated the 2009 Order by providing and
4 procuring payment processing for merchant-clients engaged in fraud, failing to conduct a
5 reasonable investigation of prospective merchant-clients, and failing to monitor merchant-
6 clients' transaction activity to ensure that the client is not engaged in practices that are deceptive,
7 unfair, or abusive within the meaning of Section 5 of the FTC Act or the Telemarketing Sales
8 Rule ("TSR"), 16 C.F.R. § 310.

9 3. For purposes of any proceeding in which the FTC is a party, Defendants Wells,
10 Interbill, and Priority do not contest that the FTC could submit sufficient evidence to
11 demonstrate by clear and convincing evidence the following:

- 12 a. Wells is the sole owner and officer of Priority, which is the successor to Interbill;
- 13 b. Defendants worked as a reseller of payment processing services for Allied Wallet,
14 Inc. and Allied Wallet, Ltd. ("Allied") from at least 2005 through the end of 2017;
- 15 c. while acting as a reseller for Allied, Defendants violated Section I.B of the 2009
16 Order by processing or taking actions to process payments for merchant-clients,
17 while knowing or consciously avoiding knowing that the merchant-clients'
18 business practices, related to an offer for which Defendants were providing
19 payment processing services, were or were likely to be deceptive or unfair within
20 the meaning of Section 5 of the FTC Act or in violation of the TSR (including in
21 Defendants' processing for the defendants in the following federal enforcement
22 actions: *FTC v. Advertising Strategies, et al.*, No. 2:16-cv-3353 (D. Ariz. filed
23 Oct. 3, 2016) and *FTC v. Stark Law, LLC, et al.*, No. 1:16-cv-3463 (N.D. Ill. filed
24 Mar. 21, 2016));
- 25 d. while acting as a reseller for Allied, Defendants violated Section II of the 2009
26 Order by processing payments on behalf of merchant-clients without first
27 engaging in a reasonable investigation of the prospective clients and the offer for
28 which each prospective client requested Defendants' payment processing services

1 to ensure compliance with the FTC Act;

2 e. while working as a reseller for Allied, Defendants violated Section III of the 2009
3 Order by failing to monitor each merchant-client's transactions to ensure that the
4 client is not engaged in practices that are deceptive, unfair, or abusive within the
5 meaning of Section 5 of the FTC Act or the TSR;

6 f. Defendants violated Section V of the 2009 Order by failing to submit a written
7 acknowledgement of receipt of the 2009 Order;

8 g. Defendants violated Section VI.B of the 2009 Order by failing to deliver a copy
9 of the Order to employees of Interbill or Priority, who were engaged in providing
10 payment processing services to merchants;

11 h. Defendants violated Section VII.C of the 2009 Order by failing to submit a
12 written compliance report to the Commission, sworn under penalty of perjury,
13 setting forth in detail the manner and form in which they complied with the Order;
14 and

15 i. as a result of Defendants' violative behavior, consumers suffered injury of One
16 Million Eight Hundred Twelve Thousand, Two Hundred and Four Dollars
17 (\$1,812,204).

18 4. Defendants waive any claim that they may have under the Equal Access to Justice
19 Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order,
20 and agree to bear their own costs and attorney fees.

21 5. The parties waive all rights to appeal or otherwise challenge or contest the
22 validity of this Order.

23 **DEFINITIONS**

24 For the purposes of this Order, the following definitions apply:

25 A. **"Corporate Defendant"** means Interbill, Ltd., and any subsidiaries, successors,
26 or assigns, including Priority Payout Corp.

27 B. **"Defendants"** means the Corporate Defendant and Thomas Wells, individually or
28 collectively, or in any combination.

1 C. “**Independent Sales Organization**” or “**ISO**” means any Person that enters into
2 an agreement or contract with a Payment Processor to sell or market Payment Processing
3 services to a merchant.

4 D. “**Payment Processing**” means providing any Person, directly or indirectly, with
5 the means used to charge or debit accounts through the use of any payment mechanism,
6 including, but not limited to, debit, credit, prepaid, or stored value cards. The means used to
7 charge or debit accounts covered by this definition includes, among other things: (a) reviewing
8 and approving merchant applications for Payment Processing services; (b) providing the means
9 to transmit sales transaction data from merchants to acquiring banks or other financial
10 institutions; (c) clearing, settling, or distributing proceeds of sales transactions from acquiring
11 banks or financial institutions to merchants; and (d) processing chargebacks.

12 E. “**Payment Processor**” means any Person providing Payment Processing services
13 in connection with another Person’s sale of goods or services, or in connection with any
14 charitable donation.

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

17 G. “**Sales Agent**” means a Person that matches, arranges, or refers prospective
18 applicants for merchant accounts to a Payment Processor or ISO.

19 H. “**2009 Order**” means the Final Judgment and Order for Permanent Injunction
20 and Other Equitable Relief (ECF No. 42), entered on April 30, 2009, in *FTC v. Interbill, Ltd., et*
21 *al.*, No. 2:06-CV-01644-JCM-PAL.

22 **ORDER**

23 **I. BAN AGAINST PAYMENT PROCESSING OR ACTING AS AN**
24 **ISO OR SALES AGENT**

25 IT IS ORDERED that Defendants are permanently restrained and enjoined from directly
26 or indirectly acting as a Payment Processor, ISO, Sales Agent, or an agent or employee of any of
27 the foregoing.

1 Complaint and those described in the Findings section, above. Any money not used for such
2 equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no
3 right to challenge any actions the Commission or its representatives may take pursuant to this
4 Subsection.

5 **IV. CUSTOMER INFORMATION**

6 IT IS FURTHER ORDERED that Defendants and Defendants' officers, agents,
7 employees, and attorneys, and all other Persons in active concert or participation with any of
8 them, who receive actual notice of this Order, whether acting directly or indirectly, are
9 permanently restrained and enjoined from directly or indirectly:

10 A. failing to provide sufficient customer information to enable the Commission to
11 efficiently administer consumer redress. If a representative of the Commission requests in
12 writing any information related to redress, Defendants must provide it, in the form prescribed by
13 the Commission, within 14 days;

14 B. disclosing, using, or benefitting from customer information, including the name,
15 address, telephone number, email address, social security number, other identifying information,
16 or any data that enables access to a customer's account (including a credit card, bank account, or
17 other financial account), that any Defendant obtained prior to entry of this Order; and

18 C. failing to destroy such customer information in all forms in their possession,
19 custody, or control within 30 days after entry of this Order.

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

23 **V. COOPERATION**

24 IT IS FURTHER ORDERED that Defendants must fully cooperate with representatives
25 of the Commission in this case and in any investigation related to or associated with the
26 transactions or the occurrences that are the subject of the Complaint or the facts in the Findings
27 section, above. Defendants must provide truthful and complete information, evidence, and
28 testimony. Defendant Wells must appear and Corporate Defendant must cause its officers,

1 employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and
2 any other proceedings that a Commission representative may reasonably request upon 5 days
3 written notice, or other reasonable notice, at such places and times as a Commission
4 representative may designate, without the service of a subpoena. Nothing in this Section V
5 precludes Defendant Wells from invoking his constitutional Fifth Amendment privilege against
6 self-incrimination.

7 **VI. ORDER ACKNOWLEDGMENT**

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

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

12 B. For 20 years after entry of this Order, Defendant Wells for any business that he,
13 individually or collectively with any other Defendants, is the majority owner or controls directly
14 or indirectly, and Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
15 officers, directors, and LLC managers and members; (2) all employees having managerial
16 responsibilities for conduct related to the subject matter of the Order and all agents and
17 representatives who participate in conduct related to the subject matter of the Order; and (3) any
18 business entity resulting from any change in structure as set forth in the Section titled
19 Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current
20 personnel. For all others, delivery must occur before they assume their responsibilities.

21 C. From each individual or entity to which a Defendant delivered a copy of this
22 Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of
23 receipt of this Order.

24 **VII. COMPLIANCE REPORTING**

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

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

1 1. Each Defendant must: (a) identify the primary physical, postal, and
2 email address and telephone number, as designated points of contact, which
3 representatives of the Commission may use to communicate with Defendant; (b)
4 identify all of that Defendant's businesses by all of their names, telephone
5 numbers, and physical, postal, email, and Internet addresses; (c) describe the
6 activities of each business, including the goods and services offered, the means of
7 advertising, marketing, and sales, and the involvement of any other Defendant
8 (which Defendant Wells must describe if he knows or should know due to his
9 own involvement); (d) describe in detail whether and how that Defendant is in
10 compliance with each Section of this Order; and (e) provide a copy of each Order
11 Acknowledgment obtained pursuant to this Order, unless previously submitted to
12 the Commission.

13 2. Additionally, Defendant Wells must: (a) identify all telephone
14 numbers and all physical, postal, email and Internet addresses, including all
15 residences; (b) identify all business activities, including any business for which
16 such Defendant performs services whether as an employee or otherwise and any
17 entity in which such Defendant has any ownership interest; and (c) describe in
18 detail such Defendant's involvement in each such business, including title, role,
19 responsibilities, participation, authority, control, and any ownership.

20 B. For 20 years after entry of this Order, each Defendant must submit a compliance
21 notice, sworn under penalty of perjury, within 14 days of any change in the following:

22 1. Each Defendant must report any change in: (a) any designated
23 point of contact; or (b) the structure of any Corporate Defendant or any entity
24 that Defendant has any ownership interest in or controls directly or indirectly that
25 may affect compliance obligations arising under this Order, including: creation,
26 merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that
27 engages in any acts or practices subject to this Order.

28 2. Additionally, Defendant Wells must report any change in: (a)

1 name, including aliases or fictitious name, or residence address; or (b) title or role
2 in any business activity, including any business for which he performs services
3 whether as an employee or otherwise and any entity in which he has any
4 ownership interest, and identify the name, physical address, and any Internet
5 address of the business or entity.

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

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

14 E. Unless otherwise directed by a Commission representative in writing, all
15 submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or
16 sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,
17 Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,
18 Washington, DC 20580. The subject line must begin: *FTC v. Thomas Wells*, FTC File No.
19 X070025.

20 VIII. RECORDKEEPING

21 IT IS FURTHER ORDERED that Defendants must create certain records for 20 years
22 after entry of this Order, and retain each such record for 5 years. Specifically, Corporate
23 Defendant and Defendant Wells for any business that such Defendant, individually or
24 collectively with any other Defendants, is a majority owner or controls directly or indirectly,
25 must create and retain the following records:

- 26 A. accounting records showing the revenues from all goods or services sold;
- 27 B. personnel records showing, for each Person providing services, whether as an
28 employee or otherwise, that Person’s: name; addresses; telephone numbers; job title or position;

1 dates of service; and (if applicable) the reason for termination;

2 C. records of all consumer complaints and refund requests, whether received directly
3 or indirectly, such as through a third party, and any response; and

4 D. all records necessary to demonstrate full compliance with each provision of this
5 Order, including all submissions to the Commission.

6 **IX. COMPLIANCE MONITORING**

7 IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants'
8 compliance with this Order:

9 A. Within 14 days of receipt of a written request from a representative of the
10 Commission, each Defendant must: submit additional compliance reports or other requested
11 information, which must be sworn under penalty of perjury; appear for depositions; and produce
12 documents for inspection and copying. The Commission is also authorized to obtain discovery,
13 without further leave of court, using any of the procedures prescribed by Federal Rules of Civil
14 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

15 B. For matters concerning this Order, the Commission is authorized to
16 communicate directly with each Defendant. Defendants must permit representatives of the
17 Commission to interview any employee or other Person affiliated with any Defendant who has
18 agreed to such an interview. The Person interviewed may have counsel present.

19 C. The Commission may use all other lawful means, including posing, through its
20 representatives as consumers, suppliers, or other individuals or entities, to Defendants or any
21 individual or entity affiliated with Defendants, without the necessity of identification or prior
22 notice. Nothing in this Order limits the Commission's lawful use of compulsory process,
23 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

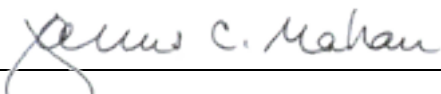
24 D. Upon written request from a representative of the Commission, any consumer
25 reporting agency must furnish consumer reports concerning Defendant Wells, pursuant to
26 Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

X. 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.

IT IS SO ORDERED:



UNITED STATES DISTRICT JUDGE

DATED: April 10, 2019

1 **SO STIPULATED AND AGREED:**

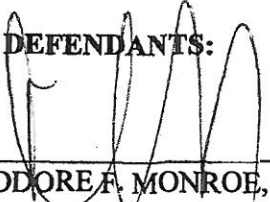
2 **FOR PLAINTIFF:**
3 **FEDERAL TRADE COMMISSION**

4 
5 _____

Date: 4-5-2019

6 ANDREW S. HUDSON
7 KAREN S. HOBBS
8 Federal Trade Commission
9 600 Pennsylvania Ave., NW
10 Mailstop CC-8528
11 Washington, DC 20580
12 (202) 326-2213 / ahudson@ftc.gov
13 (202) 326-3587 / khobbs@ftc.gov
14 Attorneys for Plaintiff

15 **FOR DEFENDANTS:**

16 
17 _____
18 THEODORE F. MONROE, ESQ.
19 The Law Offices of Theodore F. Monroe
20 800 West 6th St., Suite 500
21 Los Angeles, CA 90017
22 (213) 233-2272 / monroe@tmflaw.com
23 Attorney for Defendants Thomas Wells
24 and Interbill, Ltd. and its successor,
25 Priority Payout Corp.

Date: 12-3-2018

26 **DEFENDANTS:**

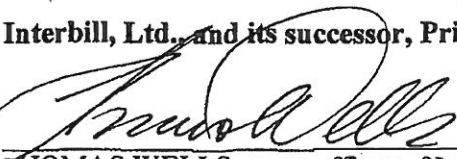
27 **Thomas Wells**

28 
29 _____

Date: 12-3-2018

THOMAS WELLS, Individually

Interbill, Ltd., and its successor, Priority Payout Corp.

30 
31 _____
32 THOMAS WELLS, as an officer of Interbill, Ltd.
33 and its successor, Priority Payout Corp.

Date: 12-3-2018