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19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 AGUILAR AUTO REPAIR, INC. and  
22 CENTRAL COAST TOBACCO COMPANY,  
23 LLC, individually and on behalf of all others  
24 similarly situated,

25 Plaintiffs,

26 v.

27 WELLS FARGO BANK, N.A., PRIORITY  
28 TECHNOLOGY HOLDINGS, INC., PRIORITY  
PAYMENT SYSTEMS, LLC, and THE CREDIT  
WHOLESALE COMPANY, INC.,

Defendants.

Case No. 3:23-cv-06265-AMO

Hon. Araceli Martinez-Olguin

**FIRST AMENDED**  
**CLASS ACTION COMPLAINT FOR**  
**VIOLATION OF:**

(1) California Invasion of Privacy Act (Cal.  
Penal Code § 630, *et seq.*)

1 **FIRST AMENDED CLASS ACTION COMPLAINT**

2 Plaintiffs Aguilar Auto Repair, Inc. and Central Coast Tobacco Company, LLC bring this  
3 class action individually and on behalf of all others similarly situated, against Defendants Wells  
4 Fargo Bank, N.A. (“Wells Fargo”), Priority Technology Holdings, Inc., Priority Payment Systems,  
5 LLC (together “Priority”), and The Credit Wholesale Company, Inc. (“Wholesale”). Plaintiffs make  
6 the following allegations upon personal knowledge as to their own acts and upon information and  
7 belief and its attorneys’ investigation as to all other matters:

8 **INTRODUCTION**

9 1. Plaintiffs are California small businesses that were secretly recorded during  
10 telemarketing cold calls made by Wholesale on behalf of Wells Fargo and Priority. This conduct was  
11 illegal because, under the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code § 630, *et*  
12 *seq.*, California is a “two-party state” that requires a call recipient’s consent before a call can be  
13 recorded.

14 2. Wells Fargo runs a nationwide payments processing business. This business  
15 processes millions of credit and debit card transactions that occur at businesses around the country  
16 every day.

17 3. Wells Fargo employed Priority and Wholesale to manage, market, and sell its credit  
18 and debit card processing services to businesses in California and around the United States.

19 4. Wholesale is a sales and marketing company. Every day, Wholesale placed thousands  
20 of telemarketing cold calls to small businesses with the goal of scheduling in-person appointments  
21 where sales agents would pitch Wells Fargo’s payment processing services. Wholesale recorded  
22 these appointment-setting phone calls without ever warning the recipients.

23 5. Priority is a “processor” that manages technological infrastructure for Wells Fargo’s  
24 payments business, provides back-end customer service and support, and oversees sales and  
25 marketing companies like Wholesale. Priority supervised Wholesale’s sales activities, including its  
26 appointment-setting telemarketing calls, on behalf of Wells Fargo.



1 there. Wells Fargo further operates its payments processing business in the state of California in a  
2 continuous and systematic way by knowingly marketing the business to thousands of California  
3 businesses through regular telemarketing calls to phone numbers with California area codes made on  
4 its behalf by Wholesale, by signing California businesses brought to it by Wholesale as clients  
5 together with Priority, and by regularly servicing those clients.

6 14. This Court has personal jurisdiction over Priority Technology Holdings, Inc. and  
7 Priority Payment Systems, LLC because each operates its payment processing business in the state  
8 of California in a continuous and systematic way by knowingly marketing that business to thousands  
9 of California businesses through regular telemarketing calls to phone numbers with California area  
10 codes and in-person sales appointments made on its behalf by Wholesale, by signing California  
11 businesses brought to it by Wholesale as clients together with Wells Fargo, and by regularly  
12 servicing those clients.

13 15. This Court has personal jurisdiction over The Credit Wholesale Company, Inc.  
14 because it operates its payment processing business in the state of California in a continuous and  
15 systematic way by knowingly marketing the business to thousands of California businesses through  
16 regular telemarketing calls to California area codes made on behalf of Wells Fargo and Priority, by  
17 signing California businesses as clients on behalf of Wells Fargo and Priority, and by regularly  
18 servicing those clients.

19 16. Venue is proper in the Superior Court of the State of California, County of San  
20 Francisco under Cal. Code of Civ. Proc. § 395(a) because Wells Fargo has its principal place of  
21 business in this County. Venue is proper in the United States District Court for the Northern District  
22 of California under 28 U.S.C. 1441 because Defendant Wells Fargo removed this action to this  
23 district court from the Superior Court of the State of California, County of San Francisco.

#### 24 **PARTIES**

25 17. Wells Fargo Bank, N.A. is a National Banking Association registered with the  
26 Comptroller of the Currency in Sioux Falls, South Dakota with its main branch at 101 N. Phillips  
27  
28

1 Ave., Sioux Falls, South Dakota. The headquarters, principal place of business, and “Corporate  
2 Offices” of Wells Fargo are located at 420 Montgomery Street, San Francisco, California.

3 18. Priority Technology Holdings, Inc. is a Delaware Corporation with its headquarters  
4 and principal place of business at 2001 Westside Parkway, Unit 155, Alpharetta, Georgia.

5 19. Priority Payment Systems, LLC is a Georgia limited liability corporation and the  
6 main subsidiary of Priority Technology Holdings, Inc. Its headquarters and principal place of  
7 business are also at 2001 Westside Parkway, Unit 155, Alpharetta, Georgia.

8 20. The Credit Wholesale Company, Inc. is a Texas corporation with its headquarters and  
9 principal place of business at 7602 University Avenue, Lubbock, Texas.

10 21. Central Coast Tobacco Company, LLC is a California Limited Liability Corporation  
11 that was a party to confidential communications that were surreptitiously recorded by Wholesale on  
12 behalf of Priority and Wells Fargo. These communications were received by Central Coast Tobacco  
13 Company, LLC doing business as Hellam’s Tobacco and Wine Shop via a cordless telephone with  
14 an (831) California-only area code at its principal place of business at 423 Alvarado Street,  
15 Monterey, California. Wholesale could only reach that phone by dialing the phone number with the  
16 (831) California area code. Central Coast Tobacco Company, LLC did not initiate the call, had no  
17 prior relationship with Wholesale, had no knowledge that Wholesale was calling until the call was  
18 underway, and never received any disclosure—at any time—that recording was occurring, nor was  
19 there a beep or any other indicia of recording.

20 22. Aguilar Auto Repair, Inc. is a California limited liability corporation that was a party  
21 to confidential communications that were surreptitiously recorded by Wholesale on behalf of Priority  
22 and Wells Fargo. These communications were received by Aguilar Auto Repair, Inc. via a cordless  
23 telephone with a (562) California area code at its principal place of business at 12262 1/2 Woodruff  
24 Avenue, Downey, California. Wholesale could only reach that phone by dialing the phone number  
25 with the (562) California area code. Aguilar Auto Repair, Inc. did not initiate the call, had no prior  
26 relationship with Wholesale, had no knowledge that Wholesale was calling until the call was  
27  
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1 underway, and never received any disclosure—at any time—that recording was occurring, nor was  
2 there a beep or any other indicia of recording.

### 3 THE CALIFORNIA INVASION OF PRIVACY ACT

4 23. The California Invasion of Privacy Act (“CIPA”), Cal. Penal Code § 630 *et seq.*, was  
5 in effect at all times relevant to this complaint. Through CIPA, California is a so-called “two-party  
6 state” that requires the consent of all parties to a phone call before recording can occur.

7 Section 632 of CIPA forbids the recordation of confidential communications that occur over any two  
8 telephones. *See* Cal. Penal Code § 632.

9 24. “[A] conversation is confidential if a party to that conversation has an objectively  
10 reasonable expectation that the conversation is not being overheard or recorded[.]” *Smith v. LoanMe*,  
11 11 Cal. 5th 183, 193 (2021) (quoting *Flanagan v. Flanagan*, 27 Cal. 4th 766, 768 (2002)).

12 25. Section 632.7 of CIPA forbids the recordation of any communications—confidential  
13 or not—when those communications involve a cellular or cordless phone. *See* Cal. Penal Code §  
14 632.7.

15 26. CIPA provides for statutory damages of \$5,000 per secretly recorded call. *See* Cal.  
16 Penal Code § 637.2.

17 27. CIPA is a codification of long-held, common-sense beliefs about the right to speak  
18 candidly, free from intrusion.

19 28. Defendants’ practice of secretly recording phone calls to Plaintiffs injured Plaintiffs  
20 by violating their privacy.

### 21 FACTUAL ALLEGATIONS

#### 22 The payments processing industry in the United States

23 29. Every business in the United States that wishes to accept payment by Visa or  
24 Mastercard must have a relationship with a bank that is a member of the Visa or Mastercard payment  
25 networks. In the lingo of the payments processing industry, these banks, which acquire businesses as  
26 clients, are called “acquirers” or “acquiring banks.” The many thousands of retailers, restaurants, and  
27 other businesses that they acquire are called “merchants.”

1           30.     Acquiring banks like Wells Fargo handle and process every credit and debit card  
2 transaction that occurs at its merchants’ places of business. In return for these payment processing  
3 services, the acquirer charges its merchants a fee equal to a percentage of the dollar value of each  
4 transaction, plus other miscellaneous fees.

5           31.     The more merchants Wells Fargo acquires, the more transactions it processes, and the  
6 more money it makes from transaction fees. As a result, Wells Fargo has a strong incentive to  
7 acquire as many merchants as possible.

8           32.     Acquiring is a big business. According to a report authored by the Federal Reserve  
9 System, the total value of noncash payments in the United States in 2021 was \$128.51 trillion. *See*  
10 Fed. Reserve System. *2022 Federal Reserve Payment Study: 2022 Triennial Initial Data Release*,  
11 [www.federalreserve.gov/paymentsystems/fr-payments/study.htm](http://www.federalreserve.gov/paymentsystems/fr-payments/study.htm).

12           33.     Acquiring banks like Wells Fargo lack the staff to solicit the countless small  
13 merchants across the United States, much less provide them with the required equipment (credit card  
14 terminals, etc.) and ongoing customer service. So, Wells Fargo outsources this work to companies  
15 that specialize in sales and marketing. These sales and marketing companies are called either  
16 “Independent Sales Organizations (“ISOs”) or “Member Service Providers” (“MSPs”). The common  
17 abbreviation in the payments industry is ISO/MSP.

18           34.     Some ISO/MSPs are multi-billion-dollar corporations that provide sophisticated  
19 technological infrastructure and massive sales operations to acquirers. Others are small sales  
20 companies that focus only on telemarketing and in-person sales appointments to the mom-and-pop  
21 businesses that larger ISO/MSPs miss. Frequently, banks take a hands-off approach to managing  
22 their payments business and contract essentially all of their payments work to an ISO/MSP. These  
23 large companies—generally called a “processor”—then handle the technological infrastructure and  
24 sales work involved. These processors also supervise smaller ISO/MSPs that perform sales and  
25 marketing work that is targeted by region or business segment (*e.g.*, small and medium businesses).  
26  
27  
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1 35. In this case, both Wholesale and Priority were ISO/MSPs of Wells Fargo. But Priority  
2 was a much larger “processor” that provided technological expertise to Wells Fargo in addition to  
3 doing its own sales and marketing for the bank.

4 36. As part of its work for Wells Fargo, Priority managed and supervised the work of  
5 Wholesale, a smaller ISO/MSP that focused exclusively on sales and marketing to small merchants  
6 across the country.

7 37. For its part, Wholesale was a mere “reseller” that was not even a party to the  
8 contracts that it offered to merchants. In fact, while Wholesale’s logo appeared at the top of the  
9 payment processing contracts that it offered to merchants, it had no signature block at the bottom of  
10 those contracts. So, Wholesale was an agent in the classic sense: it had the power to identify sales  
11 targets and pursue them, but only on behalf of and for the benefit of Wells Fargo and Priority.

### 12 **The Wholesale Sales Program**

13 38. Wholesale’s primary function in the payments industry is to solicit merchants. Its  
14 sales program is simple and straightforward.

15 39. Wholesale operates call centers around the country staffed with telemarketers. Every  
16 day, these telemarketers make appointment-setting phone calls to merchants targeting specific sales  
17 territories around the country, including in California. These are true “cold” calls, in that none of the  
18 call recipients, including Plaintiffs here, have any relationship with Wholesale at the time of the  
19 calls.

20 40. The purpose of these telemarketing calls is to develop leads for Wholesale’s team of  
21 field sales representatives. These field representatives are the individuals who present a contract to  
22 merchants and close the deal at the sales target’s place of business.

23 41. Wholesale’s field sales representatives, as is typical in the industry, are paid on a  
24 commission basis. Because they are only paid when they close a sale, these sales representatives  
25 highly value good sales leads.

26 42. Wholesale’s call centers develop those sales leads. In every call, a Wholesale  
27 telemarketer offers the services of Wholesale, Priority, and Wells Fargo and attempts to schedule a  
28



1 sales meeting between a Wholesale representative and a merchant. Call recipients, including  
2 Plaintiffs, receive no notice or other forewarning before the call and so have no knowledge that they  
3 will receive a telemarketing call from Wholesale until they answer the call, at which point the secret  
4 recording is already underway.

5 43. Because Wholesale knows when its sales representatives are scheduled to be in a  
6 particular geographic area, Wholesale telemarketers make calls to target businesses in that  
7 geographic area ahead of time. By making appointment-setting phone calls to the particular  
8 geographic area in advance, Wholesale can ensure field sales representatives have an adequate  
9 number of pre-scheduled sales appointments. In this case, Wholesale purposefully made secretly  
10 recorded appointment-setting calls to small businesses in California with the intention of scheduling  
11 in-person sales meetings at each target's place of business in California. When sales targets agreed to  
12 a meeting, Wholesale sent a field sales representative to the California location of the small business  
13 to try and close the deal. In this way, Wholesale purposefully targeted California businesses for  
14 appointment-setting calls and availed itself of the privilege of doing business in California.

15 44. For example, Wholesale called the (831) area code phone number associated with  
16 Central Coast Tobacco, Inc. because Wholesale had scheduled a sales representative to work in the  
17 area of Monterey, California where Central Coast Tobacco, Inc. is located. Similarly, Wholesale  
18 called the (562) area code phone number associated with Aguilar Auto Repair, Inc. because  
19 Wholesale had scheduled a sales representative to work in the area of Downey, California, where  
20 Aguilar Auto Repair, Inc. is located. Wholesale carried out this identical process with many other  
21 similarly situated California small businesses, calling their California area code phone numbers and  
22 attempting to schedule sales meetings at the locations of their businesses in California.

23 45. Both Wells Fargo and Priority knew Wholesale purposefully targeted California  
24 businesses on behalf of Wells Fargo and Priority, because Wholesale regularly signed up California  
25 small businesses as customers of Wells Fargo and Priority.

26 46. Wholesale records all of its appointment-setting phone calls from beginning to end.  
27 And those recordings are an essential part of Wholesale's sales model.

28

1           47.     Managing and motivating telemarketers is not easy. The workers are unskilled, base  
2 pay is typically minimum wage, and turnover is high. Wholesale motivates its telemarketers by  
3 paying them a commission each time they successfully set a sales appointment. Fifty dollars per  
4 appointment is typical and it can add up. But this poses a problem: if telemarketers can claim a  
5 commission just for setting a sales appointment, they are incentivized to exaggerate or even falsely  
6 claim that a merchant agreed to an appointment. By recording all appointment-setting phone calls,  
7 Wholesale can audit a telemarketer's claim for a commission by simply listening to the call.

8           48.     Making sure each appointment is a genuine sales lead is also important to  
9 Wholesale's field sales representatives. Because Wholesale's field sales representatives are also paid  
10 on a commission basis, they highly value qualified sales leads. Plus, by reviewing appointment-  
11 setting calls, a sales representative can identify any particular services that were of interest during  
12 the call and tailor their pitch accordingly.

13           49.     In sum, recording appointment-setting calls is an essential part of Wholesale's overall  
14 sales model. Without those recordings, the sales model simply does not work.

15           50.     But nobody wants to be recorded by a telemarketer. If a telemarketer does warn a call  
16 recipient that an unsolicited telemarketing call is being recorded, the call recipient frequently ends  
17 the call.

18           51.     So, Wholesale had a solution: don't tell. Keep the fact that you are recording  
19 merchants a secret from them. Wholesale never disclosed to the recipients of appointment-setting  
20 phone calls that those calls were recorded. Nor did Wholesale provide any beep or other warning  
21 that could conceivably put call recipients on notice that the appointment-setting calls were being  
22 recorded. By definition, then, Wholesale never received consent—as required by CIPA—to record  
23 those calls.

24           52.     In fact, Wholesale call center employees followed standardized call scripts that they  
25 read out during each appointment-setting call. Those scripts never included any kind of warning or  
26 other disclosure that appointment-setting telemarketing calls were recorded.  
27  
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1 [https://www.ftc.gov/news-events/news/press-releases/2020/05/worldwide-payment-processor-](https://www.ftc.gov/news-events/news/press-releases/2020/05/worldwide-payment-processor-payments-industry-executive-pay-402-million-settle-ftc-charges-assisting)  
2 [payments-industry-executive-pay-402-million-settle-ftc-charges-assisting](https://www.ftc.gov/news-events/news/press-releases/2020/05/worldwide-payment-processor-payments-industry-executive-pay-402-million-settle-ftc-charges-assisting).

3 59. In another case, an ISO/MSP was accused of “lur[ing] small businesses with false  
4 promises” and “trapping” them with “hidden terms, surprise exit fees, and zombie charges.” *See* Fed.  
5 Trade Comm’n, Press Release, [https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-](https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-stop-payment-processor-first-american-trapping-small-businesses-surprise-exit-fees)  
6 [takes-action-stop-payment-processor-first-american-trapping-small-businesses-surprise-exit-fees](https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-stop-payment-processor-first-american-trapping-small-businesses-surprise-exit-fees).

7 Notably, the processor had targeted business owners with “limited English proficiency[.]” *See* Fed.  
8 Trade Comm’n, Press Release, [https://consumer.ftc.gov/consumer-alerts/2022/07/payment-](https://consumer.ftc.gov/consumer-alerts/2022/07/payment-processors-sales-pitches-tricked-small-business-owners-0)  
9 [processors-sales-pitches-tricked-small-business-owners-0](https://consumer.ftc.gov/consumer-alerts/2022/07/payment-processors-sales-pitches-tricked-small-business-owners-0).

10 60. ISO/MSPs are also notorious for contacting merchants and pretending to be the  
11 merchant’s existing acquirer before tricking them into signing “updated” contracts that turn out to be  
12 whole new contracts with new acquirers. *See* Emma Fletcher, Fed. Trade Comm’n,  
13 <https://www.ftc.gov/business-guidance/blog/2018/06/credit-card-processing-deals-may-be-scams>.

14 61. Finally, the New York Attorney General recently concluded an enforcement action  
15 against a finance company that, acting with ISO/MSPs, routinely trapped small business owners into  
16 perpetual, non-cancelable leases of credit card terminals, pin pads, and similar equipment. *See* New  
17 York Attorney General, Press Release, [https://ag.ny.gov/press-release/2020/attorney-general-james-](https://ag.ny.gov/press-release/2020/attorney-general-james-wins-lawsuit-against-northern-leasing-systems-delivering)  
18 [wins-lawsuit-against-northern-leasing-systems-delivering](https://ag.ny.gov/press-release/2020/attorney-general-james-wins-lawsuit-against-northern-leasing-systems-delivering). As a result of the scheme, small business  
19 owners were tricked into to “paying thousands of dollars for equipment that costs only hundreds of  
20 dollars[.]” *State of New York v. Northern Leasing Systems, Inc.*, 2020 NY Slip Op 20243 at 5 (May  
21 29, 2020).

22 62. Bad actors are attracted to the payments industry in part because starting an ISO/MSP  
23 requires little capital: sales representatives are frequently paid 100% commission, so start-up costs  
24 are low. Similarly, because acquiring banks only pay ISO/MSPs after a merchant has been  
25 successfully recruited, banks have little downside to recruiting new ISO/MSPs.

26 63. Public and private regulators have stepped in to fill the breach. Chiefly, Visa and  
27 Mastercard regularly promulgate standards for the use of ISO/MSPs by acquiring banks. These  
28

1 regulations are contained in the “Visa Core Rules and Product and Service Rules,” the “Mastercard  
2 Rules,” and associated publications.

3 64. The touchstone of the Visa and Mastercard Rules is that banks who use ISO/MSPs  
4 must register them with Visa and Mastercard, control their work, and explicitly acknowledge them  
5 as their legal agents in their contracts.

### 6 **The Visa and Mastercard Rules governing ISO/MSPs**

7 65. The Visa and Mastercard rules are mandatory, non-optional standards that “specify  
8 the minimum requirements” for participation in the payment networks. *See, e.g.*, Visa Core Rules  
9 and Visa Product and Service Rules at 59, available at [https://usa.visa.com/support/consumer/visa-](https://usa.visa.com/support/consumer/visa-rules.html)  
10 [rules.html](https://usa.visa.com/support/consumer/visa-rules.html); *see also* Mastercard Rules, available at  
11 [https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/mastercard-](https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/mastercard-rules.pdf)  
12 [rules.pdf](https://www.mastercard.us/content/dam/public/mastercardcom/na/global-site/documents/mastercard-rules.pdf). Defendants openly acknowledge that they are subject to these Rules.

13 66. Among other things, the Rules define the relationship between acquiring banks like  
14 Wells Fargo and ISO/MSPs like Wholesale and Priority. Under the Rules, all parties know that the  
15 relationship is specifically one of principal and agent.

16 67. To begin, the Rules require that banks register any ISO/MSP with the Visa and  
17 Mastercard networks as a “Third Party Agent.” “A Member must register a Third Party Agent with  
18 Visa.” Visa Core Rule 1.10.8.6. For thirteen years, Wells Fargo has done just that, registering both  
19 Wholesale and Priority as an “ISO-M” under the Visa global registry of service providers. *See*  
20 Wholesale and Priority Visa Global Registry Validation Details, attached as Ex. A. As an ISO-M  
21 (ISO-Merchant), Wholesale qualifies as a “Third Party Agent” in the Visa network. *See* Third Party  
22 Agent Registration Program – TPA Types and Functional Descriptions at 1, attached as Ex. B  
23 (providing that ISO-Ms are Third Party Agents).

24 68. In fact, the Visa Rules literally define Third Party Agents as an “Agent” of the  
25 registering bank. *See* Visa Core Rules and Visa Product Service Rules, glossary, at 838 (defining  
26 “Agent” as “[a]n entity that acts as a VisaNet Processor/Visa Scheme Processor, or Third Party  
27 Agent, or both.”).

1           69.     The Mastercard Rules also define ISO/MSPs as agents of the bank they work for. “A  
2 Service Provider is an agent of the Customer [*i.e.*, bank] that receives or otherwise benefits from  
3 Program Service, whether directly or indirectly, performed by such Service Provider.” Mastercard  
4 Rules, Appx. C., at 431; *see also id.* at 414 (defining “Independent Sales Organization (“ISO”) as a  
5 “service provider”).

6           70.     In sum, the Rules explicitly contemplate that the relationship between Wells Fargo on  
7 the one hand, and Priority and Wholesale on the other, is one of principal to agent.

8           71.     The Rules do not just define Wholesale and Priority as Wells Fargo’s agents. They  
9 also give Wells Fargo the power to control their work.

10          72.     The Visa Rules provide that “[a]n Acquirer must implement, and its board of  
11 directors must approve ... [a]n underwriting, monitoring, and control policy for [i]ts Third Party  
12 Agents.” Visa Product and Service Rule 10.1.1.2. The board must also approve “[a] policy for  
13 reviewing solicitation materials used by its Agent.” *Id.*

14          73.     Plus, “[b]efore registering a Third Party Agent, a Member must perform an on-site  
15 inspection of the Third Party Agent’s business location as part of the due diligence requirement to ...  
16 [r]eview solicitation or sales materials[.]” Visa Product and Service Rule 10.2.2.3.

17          74.     Once the principal-agent relationship is formed, banks like Wells Fargo are required  
18 to “perform an annual review of the Third Party Agent to confirm ongoing compliance with the  
19 applicable regional due diligence standards.” *See* Visa Product and Service Rule 10.2.2.4.

20          75.     Beyond the annual rule, acquiring banks must be prepared to “submit a detailed  
21 quarterly report, signed by an authorized officer, of the activities and services of each Third Party  
22 Agent doing business on its behalf.” *See* Visa Product and Service Rule 10.2.2.6.

23          76.     Visa’s due diligence standards required Wells Fargo to “confirm that the agent is  
24 compliant with the Visa Rules, local, country and regional laws or regulations.” *See* Visa Agent Due  
25 Diligence Risk Standards at 5, available at

26 [https://usa.visa.com/dam/VCOM/download/merchants/third-party-agent-due-diligence-risk-](https://usa.visa.com/dam/VCOM/download/merchants/third-party-agent-due-diligence-risk-standards.pdf)  
27 [standards.pdf](https://usa.visa.com/dam/VCOM/download/merchants/third-party-agent-due-diligence-risk-standards.pdf).

1           77.     The Mastercard Rules are just as direct. They require that “[t]he Customer [*i.e.*,  
2 acquiring bank] must at all times be *entirely responsible* for and *must manage, direct, and control all*  
3 *aspects* of the Customer’s Program and Program Service performed by Service Providers[.]”  
4 Mastercard Rule 7.2.1 (“Customer Responsibility and Control”) (emphasis added).

5           78.     In the same vein, an acquiring bank “must conduct meaningful monitoring of such  
6 Customer’s [*e.g.*, acquirer’s] Service Providers to ensure ongoing compliance by such Customer’s  
7 Service Providers with the Standards.” *See id.*

8           79.     “Before an entity commences to perform Program Service that supports or benefits a  
9 Customer’s Program, the Customer must ... [v]erify that the entity is operating a bona fide business  
10 ... complies with applicable laws, and conduct appropriate due diligence to confirm such operations,  
11 safeguards, and compliance[.]” Mastercard Rule 7.2 (“The Program Service and Performance of  
12 Program Service”).

13           80.     Finally, both the Visa and Mastercard Rules require acquiring banks to enter into  
14 contracts with their ISO/MSPs that set out a principal-agent relationship and that give the banks the  
15 power to monitor, inspect, and control their agents. *See, e.g.*, Visa Core Rule 1.10.8.5 (“Third Party  
16 Agent Contract”), Visa Product and Service Rule 10.2.2.2 (“Third Party Agent Contract  
17 Requirements”). Here, Wells Fargo did exactly that: its contracts with Priority and Wholesale  
18 acknowledge an actual agency relationship where Wells Fargo stands as the principal. What’s more,  
19 as Wells Fargo’s processor, Priority’s contracts with Wholesale also acknowledge an actual agency  
20 relationship between Priority and Wholesale.

21           81.     In sum, under the Visa and Mastercard Rules, banks that put ISO/MSPs to work on  
22 their behalf do so with the explicit understanding that those ISO/MSPs are their legal agents and that  
23 they have the power to control their work. Indeed, they have the obligation to do so. And the power  
24 to control the work of another has always been the hallmark of an agency relationship. “An agency is  
25 proved by evidence that the person for whom the work was performed had the right to control the  
26 activities of the alleged agent.” *Van’t Rood v. County of Santa Clara*, 113 Cal. App. 4th 549, 572  
27 (Cal. App. 2003). “It is not essential that the right of control be exercised or that there be actual  
28

1 supervision of the work of the agent. The existence of the right of control and supervision establishes  
2 the existence of an agency relationship.” *Malloy v. Fong*, 37 Cal. 2d 356, 370 (1951); *Castillo v.*  
3 *Glenair, Inc.*, 23 Cal. App. 5th 262, 278 (2018) (same).

4 82. Wells Fargo exercised its power to control the work of Wholesale during the time that  
5 Wholesale was its registered agent.

6 83. Wells Fargo exercised its power to control the work of Priority during the time that it  
7 was its registered agent.

### 8 **Wells Fargo’s control over Wholesale and Priority**

9 84. Wells Fargo fully complied with its obligation to “manage, direct, and control all  
10 aspects” of its payments business, including its utilization of Wholesale and Priority.

11 85. To begin, Wells Fargo duly registered Wholesale and Priority as its agents in the Visa  
12 and Mastercard networks. *See* Wholesale and Priority Visa Global Registry Validation Details,  
13 attached as Ex. A.

14 86. Under the Rules, Wells Fargo explicitly contemplated that it was entering into a  
15 principal-agent relationship with Wholesale and Priority for the purpose of marketing the bank’s  
16 payments business.

17 87. Before accepting Wholesale as its agent, Wells Fargo also conducted a due diligence  
18 review of Wholesale that required, among other things, Wholesale to describe its sales model in  
19 detail, specifically including its lead generation model (*i.e.*, Wholesale’s use of appointment-setting  
20 telemarketing calls). Wells Fargo did the same for Priority.

21 88. Wells Fargo personnel also conducted on-site inspections of Wholesale and Priority  
22 workplaces, during which their sales and marketing procedures and practices were inspected and  
23 approved.

24 89. Wells Fargo further reviewed and approved all solicitation materials utilized by  
25 Wholesale and Priority, including the scripts and any other materials utilized by Wholesale  
26 telemarketers when they made their appointment-setting telephone calls.



1           90.     Beyond its initial due diligence, Wells Fargo also conducted ongoing reviews of  
2 Wholesale and Priority’s sales and marketing work, authorizing both agents to continue their work  
3 on behalf of Wells Fargo.

4           91.     By exercising its powers under the Rules and its contract, Wells Fargo showed it had  
5 the undeniable power to control the work of Wholesale and Priority. And this was no accident. Wells  
6 Fargo explicitly contemplated that Wholesale and Priority were its agents. In fact, under the Visa  
7 and Mastercard Rules, neither Wholesale nor Priority could do any sales work *at all* in the payments  
8 processing industry without the authorization of their registering bank Wells Fargo. *See* Mastercard  
9 Rule 7.1 (“Before an entity commences Program Service...”).

10          92.     Plus, because the recording of appointment-setting phone calls was so central to  
11 Wholesale’s business model, Wells Fargo could not have failed to discover its practice of recording  
12 those calls without warning had Wells Fargo exercised its supervisory duties under the Visa and  
13 Mastercard Rules.

14          93.     But if Wells Fargo did fail to exercise the supervisory duties called for by the Visa  
15 and Mastercard Rules, that does not limit the bank’s liability for its agent’s acts. Under California  
16 law, “[a]ctual authority is such as a principal intentionally confers upon the agent, or intentionally, or  
17 by want of ordinary care, allows the agent to believe himself to possess.” Cal. Civ. Code § 2316.  
18 Simply put, California law does not excuse a principal from liability when a principal fails to  
19 exercise its right to control the work of an agent. “It is not essential that the right of control be  
20 exercised or that there be actual supervision of the work of the agent. The existence of the right of  
21 control and supervision establishes the existence of an agency relationship.” *Malloy v. Fong*, 37 Cal.  
22 2d at 370.

23          94.     Accordingly, even if Wells Fargo flouted the Visa and Mastercard Rules and failed to  
24 conduct the inspections and reviews they required—but allowed Wholesale and Priority to continue  
25 working anyway—that would have sent a clear message to Wholesale and Priority that the Rules  
26 could be broken and they could do whatever they wanted as long as it produced revenue. In such an  
27  
28

1 instance, under California law, Wholesale was working with actual authority as an agent of Wells  
2 Fargo.

3 95. Wells Fargo also subjectively intended that both Priority entities would work as its  
4 agent. First, Wells Fargo explicitly registered Priority Technology Holdings, LLC as its agent in the  
5 Visa Global Registry of Service Providers. *See Wholesale and Priority Visa Global Registry*  
6 *Validation Details*, attached as Ex. A.

7 96. Beyond registering Priority Technology Holdings, Inc., as its agent, Wells Fargo also  
8 knew that entity—explicitly named as a holding company—owned and controlled its subsidiary,  
9 Priority Payment Systems, LLC. In fact, the contract that businesses signed with Wholesale makes  
10 Priority Payment Systems, LLC a party to the contract on a signature blank that is directly adjacent  
11 to the signature blank for Wells Fargo Bank, NA. *See Merchant Processing Application and*  
12 *Agreement*, Ex. C. So, every time Wells Fargo signed a contract with a California small business  
13 that was brought to it by Wholesale, it literally signed alongside Priority Payment Systems, LLC.  
14 Thus, it was no surprise to Wells Fargo that both its registered agent Priority Technology Holdings,  
15 Inc. and the subsidiary Priority Payment Systems, LLC were busy working as agents of the bank to  
16 make new payment processing sales from small businesses located in California.

17 97. Finally, Wholesale was only ever an agent of Wells Fargo—not any other bank.  
18 Indeed, as required by the Rules, Wholesale discloses on its website that it is “a registered  
19 Independent Sales Organization of Wells Fargo Bank, N.A., Concord, CA.” *See Visa Product and*  
20 *Service Rule 10.2.2.9* (requiring that “the Third Party Agent is prominently identified as a  
21 representative of the Member.”). No other bank is listed. Accordingly, all of Wholesale’s  
22 appointment-setting phone calls were made with the goal of selling the payment processing services  
23 of Wells Fargo. Similarly, Priority holds out to the public that it is “a registered ISO of Wells Fargo  
24 Bank, N.A.” on its website and on its merchant applications. *See Merchant Processing Application*  
25 *and Agreement*, attached as Ex. C.

**Priority's control over Wholesale**

1  
2 98. As stated above, it is not uncommon for an acquiring bank to hire a large ISO/MSP  
3 “processor” to manage its overall payments business, including the supervision of smaller  
4 ISO/MSPs.

5 99. In this case, Priority was one of the larger ISO/MSP that Wells Fargo relied on to  
6 manage its payments business. In fact, Priority holds itself out as the sixth largest “non-bank  
7 merchant acquirer [*i.e.*, processor] in the United States.”

8 100. And, indeed, Wells Fargo has delegated to Priority the work of managing significant  
9 parts of the bank’s payments business, specifically including the oversight and supervision of  
10 Wholesale in compliance with the Rules.

11 101. For example, in Form 10-K reports made to the Securities and Exchange  
12 Commission, Priority declares that “[c]entral to our risk management process are our front-line  
13 underwriting policies that vet all resellers [*i.e.*, ISO/MSPs] and merchants prior to their contractual  
14 arrangements with us. ... The collected information is delivered to a tenured team of underwriters  
15 who conduct any necessary industry checks[.]” These “industry checks” are, of course, the ones  
16 called for by the Rules.

17 102. Indeed, in its SEC Form 10-K, Priority states that its ISO/MSPs “are subject to  
18 quarterly and/or annual assessments for financial strength in compliance with our policies[.]” These  
19 annual and quarterly reviews mirror the “annual report” and “detailed quarterly reports” required by  
20 Visa Product and Service Rules 10.2.2.4 and 10.2.2.6. In this way, Priority steps into Wells Fargo’s  
21 shoes in the principal-agent relationship with Wholesale and supervises and controls Wholesale’s  
22 sales activities.

23 103. Specifically, as its “processor,” Wells Fargo relied on Priority to carry out the  
24 ongoing site visits, document reviews, and other supervisory work called for by the Visa and  
25 Mastercard Rules. Frequently, it was Priority account executives and other managers who visited  
26 Wholesale facilities, audited their sales activities, and reviewed and approved Wholesale’s sales  
27 program on behalf of Wells Fargo.

1           104. In fact, Priority also contracted with Wholesale and engaged Wholesale as an agent in  
2 accordance with the Visa and Mastercard Rules. That contract similarly gave Priority the power to  
3 audit and control the sales work of Wholesale in the same way as Wells Fargo. Because Priority  
4 knowingly accepted the contractual power to control Wholesale’s sales work—and could stop sales  
5 altogether if it withheld approval—Priority is responsible for Wholesale’s as a principal to an agent.

6           105. And, even if Priority did not responsibly exercise its power to control Wholesale, that  
7 does not limit the processor’s liability for its agent’s acts. Under California law, “[a]ctual authority is  
8 such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care,  
9 allows the agent to believe himself to possess.” Cal. Civ. Code § 2316. Simply put, California law  
10 does not excuse a principal from liability when a principal fails to exercise its right to control the  
11 work of an agent. “It is not essential that the right of control be exercised or that there be actual  
12 supervision of the work of the agent. The existence of the right of control and supervision establishes  
13 the existence of an agency relationship.” *Malloy v. Fong*, 37 Cal. 2d at 370.

14           106. Accordingly, even if Priority failed to conduct the inspections and reviews they  
15 required by the Visa and Mastercard Rules—but allowed Wholesale and Priority to continue  
16 working anyway—that would have sent a clear message to Wholesale and Priority that the Rules  
17 could be broken and they could do whatever they wanted as long as it produced revenue. In such an  
18 instance, under California law, Wholesale was working with actual authority as an agent of Wells  
19 Fargo.

20           107. Priority also makes it clear in its SEC filings that “[m]ost of the Company’s merchant  
21 customers were referred to the Company by an ISO or other reseller partners.” In other words,  
22 Priority does very little sales work of its own, but instead relies on ISOs like Wholesale. That means  
23 giving Wholesale the authority to enter into contracts between merchants, on one hand, and Priority,  
24 on the other, was a central part of Priority’s business model.

25           108. Because Priority had the power to control the work of Wholesale while acting on  
26 behalf of Wells Fargo and because Priority separately authorized Wholesale to solicit merchants and  
27

1 enter into contracts between merchants and Priority, Priority is responsible for Wholesale's illegal  
2 conduct.

### 3 **Plaintiffs' Discovery of the Secret Recordings**

4 109. Plaintiffs learned from their counsel that they were secretly recorded by Defendants.  
5 Specifically, Aguilar Auto Repair, Inc. learned it had been secretly recorded during a communication  
6 between its owner Francisco Aguilar and its counsel on February 24, 2023. Similarly, Central Coast  
7 Tobacco, Inc. learned it has been secretly recorded during a communication between its owner  
8 Wyatt Miller and its counsel on November 10, 2022. Before that time, Plaintiffs could not have  
9 reasonably discovered that phone calls they received from Defendants were secretly recorded. That  
10 is because Defendants never disclosed the fact that they recorded their appointment-setting  
11 telemarketing cold calls nor was there any beep or other indicia of recording. On the contrary, they  
12 intentionally concealed the practice. Plaintiffs filed suit in the Superior Court of the State of  
13 California on October 10, 2023.

### 14 **CLASS ALLEGATIONS**

15 110. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil  
16 Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3), California Code of Civil Procedure § 382,  
17 California Civil Code § 1781, and all other applicable laws and rules, both individually and on  
18 behalf of two classes of persons defined as follows:

#### 19 **The § 632 Class**

20 All businesses who received an appointment-setting telephone call from  
21 Wholesale on a telephone in California during the time that Wholesale was a  
22 registered agent of Wells Fargo.

#### 23 **The § 632.7 Class**

24 All businesses who received an appointment-setting telephone call from  
25 Wholesale on a cordless or cellular phone in California during the time that  
26 Wholesale was a registered agent of Wells Fargo.

1 111. Defendants and their officers, directors, and employees, plus any judge who may  
2 preside over this case and that judge's family are excluded from the Classes.

3 112. The Classes include tens of thousands of businesses who received appointment-  
4 setting telemarketing calls from Wholesale's call centers. The members of the Classes are so  
5 numerous that joinder of all members is impracticable. The exact number of class members is  
6 unknown at this time but can be determined through Defendants' records.

7 113. Plaintiffs' claims are typical of the claims of the class members because each of them  
8 simply received appointment-setting phone calls that were secretly recorded without any disclosure  
9 at any time.

10 114. Plaintiffs will fairly and adequately represent the interests of the class members.  
11 Plaintiffs' interests do not conflict with any members of the Classes they seek to represent and intend  
12 on prosecuting this action vigorously. To that end, Plaintiffs have retained competent counsel with  
13 experience in complex class action litigation, as well as litigation under CIPA, to represent the  
14 classes.

15 115. There is a community of interest among members of the Classes, because there are  
16 common questions of fact and law that predominate over any individual issues for the Classes. These  
17 common questions include:

- 18 a. Whether Plaintiffs and class members consented to the recordation of confidential  
19 communications between themselves and Wholesale under CIPA § 632 and 632.7.
- 20 b. Whether, under CIPA § 632, Plaintiffs and class members had a reasonable expectation that  
21 Wholesale was not recording the appointment-setting telemarketing calls.
- 22 c. Whether Wells Fargo is vicariously liable for the secret recordings of appointment-setting  
23 telephone calls made by Wholesale.
- 24 d. Whether Priority is vicariously liable for the secret recordings of appointment-setting  
25 telephone calls made by Wholesale.

26 116. A class action is superior to any other means for the fair and efficient adjudication of  
27 this controversy. The damages suffered by Plaintiffs and class members are relatively small  
28

1 compared to the burden and expense that would be required to individually litigate their claims  
2 against Defendants, so it would be impracticable for class members to individually seek redress for  
3 Defendants' illegal conduct. To do so would require tens of thousands of individual cases,  
4 consuming judicial resources, and potentially resulting in inconsistent or contradictory judgments.  
5 By contrast, class treatment promises the conclusion of all claims in one manageable proceeding.  
6 Certification is therefore appropriate under California Code of Civil Procedure § 382.

7 **CLAIMS OF THE CIPA § 632 CLASS**

8 **COUNT I**  
9 ***Against***  
10 **WELLS FARGO BANK, N.A.**  
11 **Violation of Cal. Penal Code § 632**

12 117. Plaintiffs incorporate all prior paragraphs as if fully alleged herein.

13 118. Wholesale's conduct constitutes a violation of California Penal Code § 632 because  
14 Wholesale recorded telephone communications with Plaintiffs without Plaintiffs' consent and  
15 without disclosure such that Plaintiffs did not reasonably expect that Wholesale would record the  
16 communications.

17 119. Plaintiffs and class members have suffered an injury to their privacy as a proximate  
18 result of Wholesale's violation of California Penal Code § 632.

19 120. Wells Fargo granted Wholesale the authority to act as its agent and solicit merchants  
20 on its behalf.

21 121. Wholesale did solicit Plaintiffs and class members on behalf of Wells Fargo as  
22 described in this complaint.

23 122. Every time Wholesale secretly recorded an appointment-setting phone call made to  
24 Plaintiffs and class members, that phone call was placed and recorded as part of a sales strategy  
25 devised for the benefit of Wells Fargo.

26 123. Wells Fargo had the power and obligation to direct and control Wholesale's sales and  
27 marketing activities, including its appointment-setting telemarketing work.  
28

1 124. Wells Fargo fully complied with its obligations under the Rules and did indeed  
2 supervise and control the sales and marketing work performed by Wholesale.

3 125. Wholesale further held itself out to Plaintiffs, class members, and the public at large  
4 as a registered agent of Wells Fargo and did so with Wells Fargo's full knowledge and approval.

5 126. Accordingly, Wholesale acted as an agent of Wells Fargo when it secretly recorded  
6 appointment-setting telemarketing calls to Plaintiff and class members. Wholesale was acting within  
7 the scope of that relationship when it secretly recorded those calls. Therefore, Wells Fargo is  
8 responsible for Wholesale's violations of CIPA.

9 127. California Penal Code § 637.2 grants Plaintiffs and class members the power to bring  
10 a private action to remedy a violation of California Penal Code § 632 and fixes the amount of  
11 damages recoverable at \$5,000 per violation. Plaintiffs are entitled to such damages, along with pre-  
12 and post-judgment interest.

13 128. California Penal Code § 637.2 further entitles Plaintiffs to enjoin and restrain any  
14 further violation of California Penal Code § 630 *et seq.*

15 129. Plaintiffs' contact information is plainly in the possession of Wholesale and, as such,  
16 they are at risk of receiving additional secretly recorded appointment-setting calls from Wholesale.  
17 Plaintiffs and class members are entitled to relief and part of said relief demands that Wells Fargo be  
18 perpetually restrained from continued violations of California Penal Code § 632 through the acts of  
19 its agent Wholesale.

20  
21 **COUNT II**  
22 ***Against***  
23 **PRIORITY TECHNOLOGY HOLDINGS, INC. and**  
24 **PRIORITY PAYMENT SYSTEMS, LLC**  
25 **Violation of Cal. Penal Code § 632**

26 130. Plaintiffs incorporate all prior paragraphs as if fully alleged herein.

27 131. Wholesale's conduct constitutes a violation of California Penal Code § 632 because  
28 Wholesale recorded telephone communications with Plaintiffs without Plaintiffs' consent and



1 without disclosure such that Plaintiffs did not reasonably expect that Wholesale would record the  
2 communications.

3 132. Plaintiffs and class members have suffered an injury to their privacy as a proximate  
4 result of Wholesale's violation of California Penal Code § 632.

5 133. Priority granted Wholesale the authority to act as its agent and solicit merchants on its  
6 behalf.

7 134. Wholesale did solicit Plaintiffs and class members on behalf of Priority as described  
8 in this complaint.

9 135. Every time Wholesale secretly recorded an appointment-setting phone call made to  
10 Plaintiffs and class members, that phone call was placed and recorded as part of a sales strategy  
11 devised for the benefit of Priority.

12 136. Priority had the power and obligation to direct and control Wholesale's sales and  
13 marketing activities, including its appointment-setting telemarketing work.

14 137. Priority did indeed supervise and control the sales and marketing work performed by  
15 Wholesale.

16 138. Accordingly, Wholesale acted as an agent of Priority when it secretly recorded  
17 appointment-setting telemarketing calls to Plaintiff and class members. Wholesale was acting within  
18 the scope of that relationship when it secretly recorded those calls. Therefore, Priority is responsible  
19 for Wholesale's violations of CIPA.

20 139. California Penal Code § 637.2 grants Plaintiffs and class members the power to bring  
21 a private action to remedy a violation of California Penal Code § 632 and fixes the amount of  
22 damages recoverable at \$5,000 per violation. Plaintiffs are entitled to such damages, along with pre-  
23 and post-judgment interest.

24 140. California Penal Code § 637.2 further entitles Plaintiffs to enjoin and restrain any  
25 further violation of California Penal Code § 630 *et seq.*

26 141. Plaintiffs' contact information is plainly in the possession of Wholesale and, as such,  
27 they are at risk of receiving additional secretly recorded appointment-setting calls from Wholesale.  
28

1 142. Plaintiffs and class members are entitled to relief and part of said relief demands that  
2 Priority be perpetually restrained from continued violations of California Penal Code § 632 through  
3 the acts of its agent Wholesale.

4 **COUNT III**  
5 ***Against***  
6 **THE CREDIT WHOLESale COMPANY, INC.**  
7 **Violation of Cal. Penal Code § 632.**

8 143. Plaintiffs incorporate all prior paragraphs as if fully alleged herein.

9 144. Wholesale's conduct constitutes a violation of California Penal Code § 632 because  
10 Wholesale recorded telephone communications with Plaintiffs without Plaintiffs' consent and  
11 without disclosure such that Plaintiffs did not reasonably expect that Wholesale would record the  
12 communications.

13 145. Plaintiffs and class members have suffered an injury to their privacy as a proximate  
14 result of Wholesale's violation of California Penal Code § 632.

15 146. California Penal Code § 637.2 grants Plaintiffs and class members the power to bring  
16 a private action to remedy a violation of California Penal Code § 632 and fixes the amount of  
17 damages recoverable at \$5,000 per violation. Plaintiffs are entitled to such damages, along with pre-  
18 and post-judgment interest.

19 147. California Penal Code § 637.2 further entitles Plaintiffs to enjoin and restrain any  
20 further violation of California Penal Code § 630 *et seq.*

21 148. Plaintiffs' contact information is plainly in the possession of Wholesale and, as such,  
22 they are at risk of receiving additional secretly recorded appointment-setting calls from Wholesale.  
23 Plaintiffs and class members are entitled to relief and part of said relief demands that Wholesale be  
24 perpetually restrained from continued violations of California Penal Code § 632.

**CLAIMS OF THE CIPA § 632.7 CLASS**

**Count IV  
*Against*  
WELLS FARGO BANK, N.A.  
Violation of Cal. Penal Code § 632.7**

149. Plaintiffs incorporate all prior paragraphs as if fully alleged herein.

150. Wholesale's conduct constitutes a violation of California Penal Code § 632.7 because Wholesale recorded communications occurring over a cordless or cellular telephone without Plaintiffs' consent.

151. Plaintiffs and class members have suffered an injury to their privacy as a proximate result of Wholesale's violation of California Penal Code § 632.7.

152. Wells Fargo granted Wholesale the authority to act as its agent and solicit merchants on its behalf.

153. Wholesale did solicit Plaintiffs and class members on behalf of Wells Fargo as described in this complaint.

154. Every time Wholesale secretly recorded an appointment-setting phone call made to Plaintiffs and class members, that phone call was placed and recorded as part of a sales strategy devised for the benefit of Wells Fargo.

155. Wells Fargo had the power and obligation to direct and control Wholesale's sales and marketing activities, including its appointment-setting telemarketing work.

156. Wells Fargo fully complied with its obligations under the Rules and did indeed supervise and control the sales and marketing work performed by Wholesale.

157. Wholesale further held itself out to Plaintiffs, class members, and the public at large as a registered agent of Wells Fargo and did so with Wells Fargo's full knowledge and approval.

158. Accordingly, Wholesale acted as an agent of Wells Fargo when it secretly recorded appointment-setting telemarketing calls to Plaintiff and class members. Wholesale was acting within the scope of that relationship when it secretly recorded those calls. Therefore, Wells Fargo is responsible for Wholesale's violations of CIPA.

1 159. California Penal Code § 637.2 grants Plaintiffs and class members the power to bring  
2 a private action to remedy a violation of California Penal Code § 632.7 and fixes the amount of  
3 damages recoverable at \$5,000 per violation. Plaintiffs are entitled to such damages, along with pre-  
4 and post-judgment interest.

5 160. California Penal Code § 637.2 further entitles Plaintiffs to enjoin and restrain any  
6 further violation of California Penal Code § 630 *et seq.*

7 161. Plaintiffs’ contact information is plainly in the possession of Wholesale and, as such,  
8 they are at risk of receiving additional secretly recorded appointment-setting calls from Wholesale.

9 162. Plaintiffs and class members are entitled to relief and part of said relief demands that  
10 Wells Fargo be perpetually restrained from continued violations of California Penal Code § 632.7  
11 through the acts of its agent Wholesale.

12  
13 **Count V**  
14 ***Against***  
15 **PRIORITY TECHNOLOGY HOLDINGS, INC. and**  
16 **PRIORITY PAYMENT SYSTEMS, LLC**  
17 **Violation of Cal. Penal Code § 632.7**

18 163. Plaintiffs incorporate all prior paragraphs as if fully alleged herein.

19 164. Wholesale’s conduct constitutes a violation of California Penal Code § 632.7 because  
20 Wholesale recorded communications occurring over a cordless or cellular telephone without  
21 Plaintiffs’ consent.

22 165. Plaintiffs and class members have suffered an injury to their privacy as a proximate  
23 result of Wholesale’s violation of California Penal Code § 632.7.

24 166. Priority granted Wholesale the authority to act as its agent and solicit merchants on its  
25 behalf. Wholesale did solicit Plaintiffs and class members on behalf of Priority as described in this  
26 complaint.

27 167. Every time Wholesale secretly recorded an appointment-setting phone call made to  
28 Plaintiffs and class members, that phone call was placed and recorded as part of a sales strategy  
devised for the benefit of Priority.

1 168. Priority had the power and obligation to direct and control Wholesale's sales and  
2 marketing activities, including its appointment-setting telemarketing work.

3 169. Priority did indeed supervise and control the sales and marketing work performed by  
4 Wholesale.

5 170. Accordingly, Wholesale acted as an agent of Priority when it secretly recorded  
6 appointment-setting telemarketing calls to Plaintiff and class members. Wholesale was acting within  
7 the scope of that relationship when it secretly recorded those calls. Therefore, Priority is responsible  
8 for Wholesale's violations of CIPA.

9 171. California Penal Code § 637.2 grants Plaintiffs and class members the power to bring  
10 a private action to remedy a violation of California Penal Code § 632.7 and fixes the amount of  
11 damages recoverable at \$5,000 per violation. Plaintiffs are entitled to such damages, along with pre-  
12 and post-judgment interest.

13 172. California Penal Code § 637.2 further entitles Plaintiffs to enjoin and restrain any  
14 further violation of California Penal Code § 630 *et seq.*

15 173. Plaintiffs' contact information is plainly in the possession of Wholesale and, as such,  
16 they are at risk of receiving additional secretly recorded appointment-setting calls from Wholesale.  
17 Plaintiffs and class members are entitled to relief and part of said relief demands that Priority be  
18 perpetually restrained from continued violations of California Penal Code § 632.7 through the acts of  
19 its agent Wholesale.

20 **Count VI**  
21 ***Against***  
22 **THE CREDIT WHOLESALE COMPANY, INC.**  
23 **Violation of Cal. Penal Code § 632.7**

24 174. Plaintiffs incorporate all prior paragraphs as if fully alleged herein.

25 175. Wholesale's conduct constitutes a violation of California Penal Code § 632.7 because  
26 Wholesale recorded communications occurring over a cordless or cellular telephone without  
27 Plaintiffs' consent.  
28

1 176. Plaintiffs and class members have suffered an injury to their privacy as a proximate  
2 result of Wholesale's violation of California Penal Code § 632.7.

3 177. California Penal Code § 637.2 grants Plaintiffs and class members the power to bring  
4 a private action to remedy a violation of California Penal Code § 632.7 and fixes the amount of  
5 damages recoverable at \$5,000 per violation. Plaintiffs are entitled to such damages, along with pre-  
6 and post-judgment interest.

7 178. California Penal Code § 637.2 further entitles Plaintiffs to enjoin and restrain any  
8 further violation of California Penal Code § 630 *et seq.*

9 179. Plaintiffs' contact information is plainly in the possession of Wholesale and, as such,  
10 they are at risk of receiving additional secretly recorded appointment-setting calls from Wholesale.  
11 Plaintiffs and class members are entitled to relief and part of said relief demands that Wholesale be  
12 perpetually restrained from continued violations of California Penal Code § 632.7.

13 **REQUEST FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of the Classes, requests that this Court  
15 enter judgment in their favor and against Defendants as follows:

- 16 a. Enter an Order certifying this as a class action and designating Plaintiffs as  
17 representatives of the Classes and Plaintiffs' counsel as Class Counsel;
- 18 b. Grant permanent injunctive relief enjoining Defendants from the non-consensual  
19 recordation of telephonic communications in violation of Cal. Penal Code §632 or § 632.7;
- 20 c. Award monetary relief to Plaintiffs and the Classes in the amount of \$5,000 per  
21 violation of CIPA §§ 632 and 632.7;
- 22 d. Award pre-and post-judgment interest;
- 23 e. Award reasonable attorneys' fees and costs to Plaintiffs' counsel;
- 24 f. Grant such further and other relief as this Court deems appropriate.

25 **JURY DEMAND**

26 Plaintiffs and the Classes demand a trial by jury on all issues that may be tried and decided  
27 by a jury.

1 Dated: February 16, 2024

Respectfully submitted,

2  
3 /s/ Jennie Lee Anderson

Jennie Lee Anderson (SBN 203586)

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9  
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12  
13 ***Counsel for Plaintiffs and the Proposed***  
14 ***Classes***

# EXHIBIT A



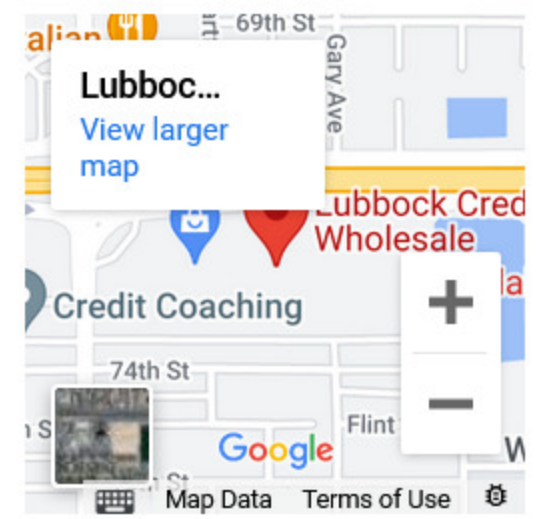
The Credit Wholesale Company, Inc

## The Credit Wholesale Company, Inc

LUBBOCK TX, U.S.A.

Website: [www.lcwe.net](http://www.lcwe.net)

Email:



*Disclaimer: All brand names and logos are the property of their owners and are used on this website for identification purposes only. The use of such brand names and logos does not imply product endorsement. Secure technology notation is self-reported by the company and not independently verified by Visa.*

Agents DBA:

The Credit Wholesale Company, Inc ▾

### Profile

**Technology:**

**Participation History:** 13 years

**Region of Operation:** U.S.

## Validation Details

Service Provider Type	Validation Type	Valid Through Date	Assessor
ISO - MERCHANT	VISA TPA PROGRAM (ISO-M)	N/A	NOT APPLICABLE

REGISTRY LAST UPDATE: May 31, 2023

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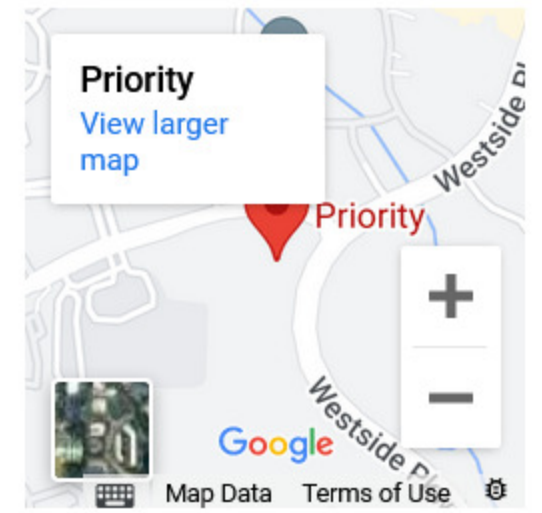
Priority Technology Holdings, Inc.

## Priority Technology Holdings, Inc.

ALPHARETTA GA, U.S.A.

Website:

Email:



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Agents DBA:

Priority Technology Holdings, Inc. ▾

### Profile

**Technology:**

**Participation History:** 13 years

**Region of Operation:** U.S.

## Validation Details

Service Provider Type	Validation Type	Valid Through Date	Assessor
ISO - MERCHANT	VISA TPA PROGRAM (ISO-M)	N/A	NOT APPLICABLE
VISANET PROCESSOR	PCI DSS	Nov 30, 2023	MegaplanIT Holdings LLC
MERCHANT SERVICER			
PAYMENT FACILITATOR			
THIRD PARTY SERVICER			

REGISTRY LAST UPDATE: May 31, 2023

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# EXHIBIT B



VISA.COM

## Third Party Agent Registration Program – TPA Types and Functional Descriptions

### Independent Sales Organizations (ISO)

- **ISO Merchant (ISO – M)** – Conducts merchant account or transaction processing solicitation, sales, customer service, merchant training activities and / or solicitation and sales of POS terminals and / or mPOS devices. Does not have access to the merchant cardholder data (CHD) or the cardholder data environment (CDE). May also sell or resell gateway services (i.e. white label gateway) in conjunction with selling the merchant account and allow the merchant to implement a payment system solution without installing or configuring their own system.
- **ISO Cardholder (ISO – C)** – Conducts cardholder solicitation, card application processing services and/or customer service activities. May be sponsored for administration of a debit/credit program on behalf of an issuer.
- **ISO ATM (ISO – ATM)** – Acts on behalf of clients to sell and deploy and/or service qualified ATMs. A “qualified” ATM is an ATM owned by or sponsored by a valid Visa or Plus client.
- **ISO Prepaid (ISO – PP)** – Solicits other entities (i.e., merchants, corporate clients, government entities, other businesses etc.) to sell, activate or load prepaid cards on behalf of an issuer. Prepaid card sales and/or activation is a primary function of their business. May be sponsored for administration of a prepaid program on behalf of an issuer.

- **ISO High Risk (ISO – HR)** – Contracts with an acquirer to provide merchant solicitation, sales, customer service, merchant transaction solicitation and/or customer training to “high-brand risk merchants”.

### Encryption Support Organizations (ESO)

Performs cryptographic key management services to support clients' ATM programs or to deploy Point of Sale PIN Entry Devices (POS PEDs) or PIN pads. ATM and PIN Pad manufacturers that manage various cryptographic key management responsibilities for clients are also considered ESOs.

An ESO maintains a business relationship with a client that includes:

- Loading or injecting encryption keys into ATMS, terminals or PIN Pads
- Loading software into a terminal or ATM which will accept Visa branded cards
- Merchant help desk support, including reprogramming of terminal software

Entities using vendor supplied Remote Key Distribution techniques must ensure that such vendors are registered with Visa as ESOs

### Third-Party Servicers (TPS)

Contracted by issuing and/or acquiring clients for payment related services such as:

- **Payment processing:** Transaction processing (authorization and clearing and settlement messages, batch transmissions and data



capture), virtual card processing, PIN transaction processing.

- **Value added services:** Chargeback/exception processing, secure password delivery, fraud control, fraud verification services, cardholder accounting, statement processing, remittance processing, data warehousing capture, customer service, risk reporting/service, loyalty programs, rewards programs, interactive voice recognition, skip tracing services.
- **Datacenter hosting:** Access to the customer's logical space used to store their payment processing system and may provider of additional services such helping their customer maintain the server, and provide power, fire suppression, cameras, biometric scans, physical security.
- **Secure storage facilities:** Secure back-up, storage or destruction of electronic and physical media for financial institutions, companies or service providers that have CHD assets but do not electronically store, process or transmit card data.
- **Managed services:** Provides services within a third party's CDE, where the managed service provider has access to any cardholder data. Managed services providers usually manage the compliance obligations on behalf of clients for specific requirements within the PCI DSS: application, system management, operations, network management and may perform day-to-day application, system management, operations with access to cardholder data.
- **Monitoring services:** For critical security alerts - Intrusion Detection Systems (IDS), anti-virus, change-detection, compliance monitoring, audit-log monitoring, etc.
- **Network service provider:** Cloud & Infrastructure services: network, server, and endpoint management & monitoring.
- **Managed firewall/router provider:** Firewall management, migration, monitoring.
- **Statement printing**  
**Call center provider:** Call centers accessing CHD
- **Token service providers:** Transform cardholder data with tokenization or encryption.
- **Corporate T&E charge reporting:** Billing, expense reporting, and loyalty/rewards for corporate card issuers
- **Acquirer token service providers:** Tokenization solution provider that has overall responsibility for the design and implementation of a specific tokenization solution, and (directly or indirectly through outsourcing) manages tokenization solutions for its customers and/or manages corresponding responsibilities. May manage tokens for merchants and acquirers. Includes Token as a Service (TaaS) providers and token requestor entities.
- **POS services:** Deploys and or services POS terminals/ATMS. Service may include performing maintenance, installation, software or hardware upgrades, replacing POS terminals/ATMs and accessing the CDE and CHD (remote or physical) but no access to PIN data.
- **Software as a Service (SaaS):** Hosting provider that allows customers to use the provider's apps running on provider's cloud infrastructure (hosting of servers, storage, and network components).
- **Platform as a Service (PaaS):** Hosting provider where customer deploys consumer-created or acquired applications onto provider's cloud



infrastructure (hosting of purchased applications).

- **Infrastructure as a Service (IaaS):** Hosting provider that allows the customer to deploy and control its own software on provider's cloud infrastructure (Infrastructure as a Service - cloud infrastructure hosting of proprietary applications).

### Merchant Servicers (MS)

May be contracted by the merchant directly, not with the merchant's acquirer to provide specific merchant payment services including but not limited to:

- **Payment Gateways and online shopping cart**
- **Payment processing:** Transaction processing (authorization and clearing and settlement messages, batch transmissions and data capture), virtual card processing.
- **POS services:** Deploys and or services POS terminals/ATMS. Service may include performing maintenance, installation, software or hardware upgrades, and replacement for POS terminals/ATMs and has access to the CDE and CHD (remote or physical) but no access to PIN data.
- **Value added services:** Chargeback/exception processing, secure password delivery, fraud control, fraud verification services, cardholder accounting, statement processing, remittance processing, data warehousing capture, customer service, risk reporting/service, loyalty programs, rewards programs, interactive voice recognition, skip tracing services.
- **3DS Service Provider:** Deploys a merchant plug-in/MPI that provides acquiring side cardholder authentication
- **Datacenter hosting:** Access to the customer's logical space used to store their payment processing system or provider of additional services such helping their customer maintain the server, and provide power, fire suppression, cameras, biometric scans, physical security.
- **Secure storage facilities:** Secure back-up, storage or destruction of electronic and physical media for financial institutions, companies or service providers that have CHD assets but do not electronically store, process or transmit card data.
- **Managed services:** Provides services within a third party's CDE, where the managed service provider has access to any cardholder data. Managed services providers usually manage the compliance obligations on behalf of clients for specific requirements within the PCI DSS: application, system management, operations, network management and may perform day-to-day application, system management, operations with access to cardholder data.
- **Monitoring services:** For critical security alerts - Intrusion Detection Systems (IDS), anti-virus, change-detection, compliance monitoring, audit-log monitoring, etc.
- **Network service provider:** Cloud & Infrastructure services: network, server, and endpoint management & monitoring.
- **Managed firewall/router provider:** Firewall management, migration, monitoring.
- **Statement printing**
- **Call center provider:** Call centers accessing CHD
- **Token service providers:** Transform cardholder data with tokenization or encryption.



- **Corporate T&E charge reporting:** Billing, expense reporting, and loyalty/rewards for corporate card issuers
- **Acquirer token service providers:** Tokenization solution provider that has overall responsibility for the design and implementation of a specific tokenization solution, and (directly or indirectly through outsourcing) manages tokenization solutions for its customers and/or manages corresponding responsibilities. May manage tokens for merchants and acquirers. Includes Token as a Service (TaaS) providers and token requestor entities.
- **Software as a Service (SaaS):** Hosting provider that allows customers to use the provider's apps running on provider's cloud infrastructure (hosting of servers, storage, and network components).
- **Platform as a Service (PaaS):** Hosting provider where customer deploys consumer-created or acquired applications onto provider's cloud infrastructure (hosting of purchased applications).
- **Infrastructure as a Service (IaaS):** Hosting provider that allows the customer to deploy and control its own software on provider's cloud infrastructure (Infrastructure as a Service - cloud infrastructure hosting of proprietary applications).

### Corporate Franchise Servicers (CFS)

Provide, manage or control an environment/ connectivity to franchisees that may or may not host or provide payment card payment services (payment applications, inventory management systems, etc.). The CFS is a corporate entity or franchisor that provides, manages or controls a centralized or hosted network environment irrespective of whether Visa cardholder data is

being stored, transmitted or processed through it. Although it may or may not host or provide card payment services, more importantly, the insecurity of the shared network can affect an independent location or franchisee and that of its own cardholder data environment if accessed by unauthorized parties. Typically, managed services are provided to the franchisees such as property management systems, inventory control systems, menu distribution systems, etc. CFSs are not directly connected to VisaNet.

### Payment Facilitators (PF)

A Payment Facilitator (PF) – also known as a “master merchant” or “merchant aggregator” – is a third-party agent that can both (i) sign a merchant acceptance agreement with a seller on behalf an acquirer, and (ii) receive settlement proceeds from an acquirer, on behalf of the underlying seller (known as a Sponsored Merchant or “submerchant”); an entity that performs either one of these functions is considered a PF, even if they don't perform both functions. Payment Facilitators may have access to cardholder data (CHD) or the cardholder data environment (CDE). Service Providers that protect, secure, store, process, or transmit Visa cardholder data and or PIN and are contracted with an acquirer to provide Visa payment services to sponsored merchants such as:

- Solicit sponsored merchant for Visa acceptance
- Contracts with sponsored merchants to enable Visa payment acceptance
- Monitors compliance of sponsored merchant activity in accordance with the Visa Rules
- Receives settlement of transaction proceeds from the acquirer on behalf of the sponsored merchant
- Must be located within the acquirer's jurisdiction



- Cannot be listed on the Terminated Merchant File (TMF), or similar files
- Cannot act as a sponsor for another Payment Facilitator
- Excluded merchant types (but may be signed under direct acquiring agreements): Internet pharmacies, Internet pharmacy referral sites, and outbound telemarketers

### High Risk Internet Payment Facilitators (HRIPF)

Contracts with acquirers to provide payment services to high-risk merchants, high-brand risk merchant, high-risk sponsored merchants or high-brand risk sponsored merchants. A High Risk Internet Payment Facilitator (HRIPF) is an entity that enters into a contract with an acquirer to provide payment services to high-risk merchants, high-brand risk merchant, high-risk sponsored merchants or high-brand risk sponsored merchants and signs one or more merchants belonging to high-brand risk merchant category codes, as defined in the Visa Rules.

### Marketplaces

A Marketplace is an online entity that brings together customers and sellers on a single, Marketplace-branded platform (i.e. e-commerce website or mobile application), processes transactions and receives settlement<sup>2</sup> proceeds on behalf of those sellers; entities that do not process transactions on behalf of sellers are not considered Marketplaces. In this model, it is the Marketplace's brand that attracts the customer and connects them with sellers operating on the Marketplace's platform; the customer can see that they are purchasing from the seller on the Marketplace and not the Marketplace itself. Marketplaces are not permitted to operate in a "card present" environment. Refer to [Beyond the Acquirer: Additional Visa Acceptance Entities](#) for more details.

### Staged Digital Wallet Operators

Digital wallets are software-based systems that (i) store information about a customer's Visa credentials used to fund the wallet's account and (ii) are used to make payments – either purchases from sellers or money remittance (i.e. person-to-person "P2P" transfers). Staged Digital Wallets are capable of conducting "back-to-back funding" transactions which permits the customer to undertake transactions with sellers on the digital wallet's platform when there are not sufficient funds in the digital wallet-assigned account to complete the transaction (which may include a "zero balance"). Refer to [Beyond the Acquirer: Additional Visa Acceptance Entities](#) for more details.

### Distribution Channel Vendors (DCV)

Packaging, storing and shipping of non-personalized Visa products (e.g. warehouses, wholesalers, logistics companies). *For more information please contact [AVPamericas@visa.com](mailto:AVPamericas@visa.com).*

### Instant Card Personalization and Issuance Agent (ICPIA)\*

A third party\*\* that performs instant card personalization issuance for the issuer. *\*ICPIA employer or government managed programs are excluded from the agent registration requirement – however must comply with remaining requirements listed in the VIOR Agents section.*

*\*\* Retailer and kiosk locations are included in this definition.*

*For more information please contact [AVPamericas@visa.com](mailto:AVPamericas@visa.com).*





### **Dynamic Currency Conversion (DCC)**

Contracts with an acquirer to provide currency conversion services to sponsored merchants at checkout.

For more information please contact [DCCcompliance@visa.com](mailto:DCCcompliance@visa.com).

### **Visa Recognized Third Parties – Does Not Require Registration**

Qualified Integrator & Reseller: Sell, install, and/or service payment applications on behalf of software vendors or others. Integrator services may include: servicing the payment applications (for example, troubleshooting, delivering remote updates, and providing remote support) according to the PA-DSS Implementation Guide and PCI DSS (PCI SSC website, 2014) Technology Solution Integrators - Sell software or provides SaaS (host the software in the cloud or installs applications directly on the server) for a merchant. The integrator's technology is configured to the gateway's system. POS Integrators - integrates POS devices/systems and may have remote access for ongoing support.

# EXHIBIT C

MERCHANT PROCESSING APPLICATION AND AGREEMENT					
Sales Rep			Sales Office		
<b>1. GENERAL INFORMATION</b> <span style="float: right;">Pg 1 of 2</span>					
Client's Business Name (Doing Business As) Braids R Us 305			Client's Corporate/Legal Name Anita L Richardson		
Location Address 26483 Sw 135 ct			Corporate Address (If Different than Location) 26483 Sw 135 ct		
City Miami	State Fl	Zip 33032	City Miami	State Fl	Zip 33032
Location Phone		Location Fax		Contact Name Anita Richardson	
Customer Service Phone		Prior Security Breach? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Contact Phone	
Business Website Address			Business Email		D&B#
Fed Tax ID # (Must match IRS income tax filing)			Tax Type		
Multiple locations? <input type="checkbox"/> Y or <input type="checkbox"/> N If Yes, enter # of locations _____			Tax Filing Name Anita L Richardson		
Send retrieval / chargeback requests to <input checked="" type="checkbox"/> Corporate Address <input type="checkbox"/> Location Address			Date Business Started 2018		Length Current Ownership
Send monthly merchant statements to: <input type="checkbox"/> Corporate Address <input checked="" type="checkbox"/> Location Address <input type="checkbox"/> Do Not Mail					
Type of Organization: <input type="checkbox"/> Sole Prop <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> LLC/LLP <input type="checkbox"/> C Corp <input type="checkbox"/> S Corp <input type="checkbox"/> Govt. (Local/State/Federal) <input type="checkbox"/> 501c/Tax Ex. State Filing: <u>FL</u>					
<input type="checkbox"/> I certify that I am a foreign entity / nonresident alien. (If checked, please attach IRS Form W-8.)			NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations. (See Part IV, Section A.4 of your Program Guide for further information.)		
<b>2. OWNERS / PARTNERS / OFFICERS</b>					
Owner/Officer 1 Anita Richardson		Home Address 26483 sw 135 ct		Telephone	Social Security #
Title Owner	% Ownership 100	City Homestead	State Fl	Zip 33032	Birth Date
Owner/Officer 2		Home Address		Telephone	Social Security #
Title	% Ownership	City	State	Zip	Birth Date
Prior Bankruptcies? Owner 1 <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Business and/or <input type="checkbox"/> Personal		Owner 2 <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Business and/or <input type="checkbox"/> Personal			
<b>3. TRANSACTION INFORMATION</b>			<b>4. NATURE OF BUSINESS</b>		
MC/V/Disc/Amex Requested Monthly Payment Card Volume \$ <u>25k</u> Requested Avg Payment Card Ticket \$ <u>50</u> Requested High Payment Card Ticket \$ <u>250</u> Previous Processor _____ Reason For Leaving _____			Describe Product/Services Sold <u>Hair</u> Business Type _____ Seasonal Merchant <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Jan <input type="checkbox"/> Feb <input type="checkbox"/> Mar <input type="checkbox"/> Apr <input type="checkbox"/> May <input type="checkbox"/> Jun <input type="checkbox"/> Jul <input type="checkbox"/> Aug <input type="checkbox"/> Sept <input type="checkbox"/> Oct <input type="checkbox"/> Nov <input type="checkbox"/> Dec Swipe % <u>90</u> MOTO% <u>10</u> INTERNET% _____ (Total must equal 100%)		
<b>5. BANKING ACCOUNT INFORMATION</b>					
Deposit Bank Name		Routing#	Account#	Bank Phone	<input type="checkbox"/> Combined ACH <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> Individual ACH
<b>6. SERVICE ACCEPTANCE AND FEE SCHEDULE</b>					
Request to Accept Card Types: <input checked="" type="checkbox"/> VISA CREDIT <input checked="" type="checkbox"/> VISA DEBIT <input checked="" type="checkbox"/> MASTERCARD CREDIT <input checked="" type="checkbox"/> MASTERCARD DEBIT <input checked="" type="checkbox"/> DISCOVER <input checked="" type="checkbox"/> AMEX CREDIT <input type="checkbox"/> PIN DEBIT					
V/MC/Discover Network Discount Plan: <input type="checkbox"/> Tiered Basic <input checked="" type="checkbox"/> Passthrough IC <input type="checkbox"/> ERR <input checked="" type="checkbox"/> Flat Rate					
Assessments & Brand Fees: <input checked="" type="checkbox"/> Included <input type="checkbox"/> Billed Separately Requested Discount Payment Method: <input checked="" type="checkbox"/> Daily <input type="checkbox"/> Monthly					
<b>DISCOUNT FEES: Visa, MasterCard, Discover, Pin Debit</b>					
All applicable Association fees will be passed through to the merchant at the applicable costs assigned by the Association. Fees include, but are not limited to, Visa's APF, Misuse of Authorization Fee, Zero Floor Limit Fee, Acquirer ISA Fee, and MasterCard's NABU Fee, Acquirer Support Fee, Cross Border Fee, and Discover IPF, ISF, Data Usage fee, Amex Net Work Fee et al.					
Qualified Discount =	Mid Qual = Qual +	Non Qual = Qual +	Pass Through IC =	ERR =	Flat Rate = <u>3.5</u>
Debit Qual Discount +	Debit Mid Qual = Qual +	Debit Non Qual = Qual +	Debit Pass Through IC =	Debit ERR =	Debit Flat Rate = <u>3.5</u>
<b>American Express Opt Blue Or AMEX Direct</b>					
Opt Blue Discount Plan: Tiered Basic <input type="checkbox"/> PassThrough IC <input type="checkbox"/> ERR <input type="checkbox"/> Flat Rate <input checked="" type="checkbox"/>					AMEX Direct:
Credit Qual <u>3.5</u> % Per Item \$ _____ Credit Mid-Qual _____% Per Item \$ _____ Credit Non-Qual _____% Per Item \$ _____					Existing SE # _____
Pass Through IC _____% Per Item \$ _____ ERR _____% Per Item \$ _____					
<b>Authorization, Monthly &amp; Miscellaneous Fees</b>					
<b>Authorization Fees:</b>		<b>Monthly Fees:</b>		<b>Miscellaneous Fees:</b>	
Visa/MC/Discover Network	\$ .	Monthly Service	\$ 0	Chargeback	\$ 30 (Per Occurrence)
Amex/Fleet/Other	\$ .	Monthly Minimum	\$ 65	Retrieval Fee	\$ 15 (Per Occurrence)
Pin Debit	\$ .	Wireless Fee	\$ .	ACH Reject Fee	\$ 25.00 (Per Occurrence)
EBT	\$ .	Pin Debit Monthly	\$ .	Annual Fee \$ .	Month to bill .
Electronic AVS	\$ 0.05	Industry Compliance	\$ .	Batch Fee	\$ . (Per Item)
Voice Auth	\$ 1.00	Industry Non-Compliance up to \$24.95 (if applicable per Section 4.8 of the Merchant Program Guide)		Sales Transaction Fee	\$ . (Per Item)
Voice AVS	\$ 3.00			(All Card Types - Per Item)	
				Return Transaction Fee	\$ . (Per Item)
				(All Card Types - Per Item)	
				<b>MX Merchant Fees:</b>	
				MX Merchant Monthly Fee \$ .	
				MX Gateway Transaction Fee \$ .	
				Plan Type:	
				MX4: <input type="checkbox"/> Reporting <input type="checkbox"/> Basic <input type="checkbox"/> Plus <input type="checkbox"/> Premium <input type="checkbox"/> Enterprise <input type="checkbox"/> Base <input type="checkbox"/> Retail <input type="checkbox"/> Developer	
				MX6: <input type="checkbox"/> Base <input type="checkbox"/> Invoicing <input type="checkbox"/> Retail	
In the event that this Agreement is terminated early, Merchant will be responsible for the payment of a \$ _____ Early Termination Fee in accordance with Part IV, Section A.3 of the Merchant Program Guide.					

7. Equipment?

Terminal or Software Type and Quantity: Type pax 680 Name \_\_\_\_\_  
Quantity 1 IP Connection?  Y  N Wireless Connection?  Yes  No Serial \_\_\_\_\_ Sim \_\_\_\_\_  
Additional Special Instructions: \_\_\_\_\_  
Do you use any third party to store, process, or transmit card data?  Yes  No  
If yes, give name/address: \_\_\_\_\_

LEASE?  Lease Company; First Data Global Leasing Lease Term: \_\_\_\_\_ mos Annual Tax Handling Fee \$10.20 This is a NON-CANCELLABLE LEASE for the full term indicated. Total Monthly Lease Charge \$ \_\_\_\_\_ w/o taxes, late fees, or other charges that may apply - See Lease Agreement for details

CLIENT INITIALS \_\_\_\_\_

8. SITE INSPECTION (Completed by Sales Agent)

I have personally conducted a Site Inspection for this merchant, visually inspected the merchant's inventory (if applicable), verified the merchant's payment application is PABP (Payment Application Best Practices) validated (if applicable), and represent that the information in this merchant application is accurate, as to the best of my knowledge. I am subject to criminal penalties and/or financial losses for false or misleading information.


Sales Agent Name: (printed) Shanqueena Harris Signature X \_\_\_\_\_

9. Annotation

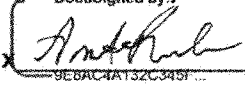
10 SIGNATURES

Client certifies that all information set forth in this completed Merchant Processing Application is true and correct and that Client has received a copy of the Program Guide (Version PPS1709) and Confirmation Page, which is part of this Merchant Processing Application (consisting of Sections 1-10) and by this reference incorporated herein. Client acknowledges and agrees that we, our Affiliates and our third party subcontractors and/or agents may use automatic telephone dialing systems to contact Client at the telephone number(s) Client has provided in this Merchant Processing Application and/or may leave a detailed voice message in the event that Client is unable to be reached, even if the number provided is a cellular or wireless number or if Client has previously registered on a Do Not Call list or requested not to be contacted Client for solicitation purposes. Client hereby consents to receiving commercial electronic mail messages from us, our Affiliates and our third party subcontractors and/or agents from time to time. Client further agrees that Client will not accept more than 20% of its card transactions via mail, telephone or internet order. However, if your Application is approved based upon contrary information stated in Section 4 above, you are authorized to accept transactions in accordance with the percentages indicated in that section. This signature page also serves as a signature page to the Equipment Lease Agreement appearing in the Third Party Section of the Program Guide, if selected, the undersigned Client being the "Lessee" for purposes of such Equipment Lease Agreement. Client authorizes PRIORITY PAYMENT SYSTEMS ("PRIORITY") and Wells Fargo Bank, N.A. ("BANK") and their respective agents to investigate the references, statements and other data contained herein and to obtain additional information from credit bureaus and other lawful sources, including persons and companies names in this Merchant Processing Application. Client authorizes PRIORITY and BANK and their respective agents (a) to procure information from any consumer reporting agency bearing his/her personal credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and (b) to contact all previous employers, personal references and educational institutions. Each of the undersigned also authorizes us and our Affiliates to provide amongst each other the information contained in this Merchant Processing Application and Agreement and any information received from all references, including banks and consumer reporting agencies. It is our policy to obtain certain information in order to verify your identity while processing your account application. If the Application is approved, each of the undersigned also authorizes us to obtain subsequent consumer reports in connection with the maintenance, updating, renewal or extension of the Agreement. Client authorizes PRIORITY and BANK and their affiliates to debit Client's designated bank account via Automated Clearing House (ACH) for costs associated with the equipment hardware, software and shipping.

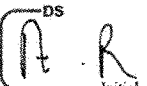
You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control (OFAC). Client certifies, under penalties of perjury, that the federal taxpayer identification number and corresponding filing name provided herein are correct. Client agrees to all the terms of this Merchant Processing Application and Agreement. This Merchant Processing Application and Agreement shall not take effect until Client has been approved and this Agreement has been accepted by PRIORITY and BANK. Client agrees to all the terms of this Merchant Processing Application and Agreement. This Merchant Processing Application and Agreement shall not take effect until Client has been approved and this Agreement has been accepted by PRIORITY and BANK.

DocuSigned by:  
Client's Business Principal / Officer:  
Signature X  Title Owner Signature X \_\_\_\_\_ Title \_\_\_\_\_  
Print Name of Signer Anita Richardson Date 3/19/2021 Print Name of Signer \_\_\_\_\_ Date \_\_\_\_\_

Personal Guarantee The undersigned guarantees to PRIORITY and BANK the performance of the Agreement, and First Data Lease if applicable, and any addendum thereto by Client, including payment of all sums due and owing and costs associated with the enforcement of the terms thereof. PRIORITY and BANK shall not be required to first proceed against the Client or enforce any other remedy before proceeding against the undersigned individual. This is a continuing guarantee and shall not be discharged or affected by the death of the undersigned and shall bind the heirs, administrators, representatives and assigns and be enforced by or for the benefit of any successor of PRIORITY or BANK. The term of this guarantee shall be for the duration of the Merchant Processing Application and Agreement and any addendum thereto and shall guarantee all obligations which may arise in connection with my activities during the term thereof through enforcement shall be sought subsequent to any termination.

Personal Guarantee Signature X  Title Owner Print Name of Signer Anita Richardson Date 3/19/2021  
Personal Guarantee Signature X \_\_\_\_\_ Title \_\_\_\_\_ Print Name of Signer \_\_\_\_\_ Date \_\_\_\_\_

Accepted By  
Priority Payment Systems, LLC Wells Fargo Bank, NA (a member of Visa USA, Inc and MasterCard International, Inc)  
P.O. BOX 246, Alpharetta, GA 30009-0246 1200 Montego Way, Walnut Creek, CA 94598  
Signature X \_\_\_\_\_ Signature X \_\_\_\_\_  
Title \_\_\_\_\_ Date \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

DS  
  
Initial

PPS1709(ia)

PART I - CONFIRMATION PAGE

PROCESSOR INFORMATION: Name: Priority Payment Systems
Address: P.O. Box 246, Alpharetta, GA 30009-0246
URL: www.prioritypaymentsystems.com/manuals/PPS1709programguide.pdf Customer Service #: 1-800-935-5961

Please read the Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you. From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

- 1. Your Discount Rates are assessed on transactions that qualify for certain reduced interchange rates imposed by MasterCard, Visa and Discover.
2. We may debit your bank account (also referred to as your Settlement Account) from time to time for amounts owed to us under the Agreement.
3. There are many reasons why a Chargeback may occur. When they occur we will debit your settlement funds or Settlement Account.
4. If you dispute any charge or funding, you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing.
5. The Agreement limits our liability to you. For a detailed description of the limitation of liability see Section 21, 28.7, 31.3, and 33.10 of the Card General Terms.
6. We have assumed certain risks by agreeing to provide you with Card processing or check services.
7. By executing this Agreement with us you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
8. The Agreement contains a provision that in the event you terminate the Agreement prior to the expiration of your initial three (3) year term, you will be responsible for the payment of an early termination fee as set forth in Part IV, A.3 under "Additional Fee Information".
9. If you lease equipment from Processor, it is important that you review Section 1 in Third Party Agreements. Bank is not a party to this Agreement. THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.
10. For questions regarding your Merchant Processing Application and Agreement, please contact Customer Service at 1-800-935-5961, and/or refer to Important Phone Numbers on the Additional Important Information Page, Part IV, Section A.5.

11. Card Organization Disclosure

Visa and MasterCard Member Bank Information: Wells Fargo Bank N.A.

The Bank's mailing address is 1200 Montego, Walnut Creek, CA 94598, and its phone number is (925) 746-4143.

Important Member Bank Responsibilities:

- a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a merchant.
b) The Bank must be a principal (signer) to the Agreement.
c) The Bank is responsible for educating merchants on pertinent Visa and MasterCard rules with which merchants must comply; but this information may be provided to you by Processor.
d) The Bank is responsible for and must provide settlement funds to the merchant.
e) The Bank is responsible for all funds held in reserve that are derived from settlement.
f) The Bank is the ultimate authority should a merchant have any problems with Visa or MasterCard products (however, Processor also will assist you with any such problems).

Important Merchant Responsibilities:

- a) Ensure compliance with Cardholder data security and storage requirements.
b) Maintain fraud and Chargebacks below Card Organization thresholds.
c) Review and understand the terms of the Merchant Agreement.
d) Comply with Card Organization Rules and applicable law and regulations.
e) Retain a signed copy of this Disclosure Page.
f) You may download "Visa Regulations" from Visa's website at: http://usa.visa.com/merchants/operations/op\_regulations.html
g) You may download "MasterCard Regulations" from MasterCard's website at: http://www.mastercard.com/us/merchant/support/rules.html

Anita L Richardson

Print Client's Business Legal Name:

By its signature below, Client acknowledges that it has received (either in person, by facsimile, or by electronic transmission) the Merchant Processing Application, Program Terms and Conditions [version PPS1709(ia)] consisting of 42 pages [including this Confirmation Page and the applicable Third Party Agreement(s)].

Client further acknowledges reading and agreeing to all terms in the Program Terms and Conditions. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

Client understands that a copy of the Program Guide is also available for downloading from the Internet at: www.prioritypaymentsystems.com/manuals/PPS1709programguide.pdf

NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM TERMS AND CONDITIONS WILL BE ACCEPTED.

Client's Business Principal:

Signature (Please sign below) DocuSigned by:

X [Signature]
0E8AC4A432G345F

Anita Richardson

Please Print Name of Signer

Owner

Title

3/19/2021

Date