

Exhibit 1

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA

Eastern Division

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Consumer Financial Protection Bureau,	:	
	:	
Plaintiff,	:	
	:	
- v -	:	Case No. 3:16-cv-00144
	:	
Intercept Corporation	:	
d/b/a Intercept EFT., Bryan Smith,	:	
and Craig Dresser	:	
	:	
Defendants.	:	
	:	
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BRIEF OF *AMICUS CURIAE* BY THE THIRD PARTY PAYMENT PROCESSORS ASSOCIATION IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

The Third Party Payment Processors Association (“TPPPA”) is a national, not-for-profit organization of payment processors, payroll processors, and banks formed in the Summer of 2013 in the wake of rulemaking though enforcement against payment processors. The TPPPA’s basic mission is to help third party payment processors and bank members operate in an efficient and compliant manner within the financial services industry by developing industry best practices in third party payment processing. The TPPPA has a strong and independent interest in this Court’s decision on Intercept Corporation, d/b/a InterceptEFT (“Intercept”), a third party sender or third party payment processor; Bryan Smith, and Craig Dresser’s (collectively, “Defendants”) Motion to Dismiss.

The TPPPA is filing this brief because it is concerned that the Consumer Financial Protection Bureau (“Bureau” or “CFPB”) has taken the position that certain conduct should be deemed “unfair” under the Consumer Financial Protection Act (“CFPA”) without alleging that Defendants violated a substantive federal law or industry rule. This position will adversely affect the due process rights of all third party payment processors and others in the payments industry if the Complaint is not dismissed.

II. BACKGROUND

Third party payment processors facilitate the gathering and proper formatting of electronic payment instructions (data) that is forwarded to the processor’s bank to facilitate monetary transactions between the processor’s merchant customer and its customers. The TPPPA helps its members perform this important role in the economy principally by educating its members on industry rules and regulations, providing compliance tools and training, and advocating its members’ interests within the payments industry to members of Congress, to state

government officials, and to government regulators. For example, the TPPPA educates its members on current rules and regulations governing the payments industry. It also trains its members and provides comprehensive tools to support members' compliance programs. In sum, TPPPA members rely on the organization for the latest guidance and best practices to comply with laws, rules, and regulations governing their industry.

Third party payment processors provide essential services to small businesses in diverse industries, and they function as important intermediaries between merchants and banks in a complex payments system. For example, a third party payment processor may receive from its merchant client a list of payments to be generated by the merchant to pay for goods or services received, and/or a list of payments to employees for payroll. The third party payment processor will then submit a payment file with payment instructions from all of its merchant clients to its bank. These payment files include payments to be pulled from an account to pay for goods or services, and payments to be sent to an account for payroll or vendor payments. The bank will then introduce the payments into the payments system and receive settlement for the payments. The funds are then passed from the bank to the third party payment processor, who settles with the merchant.

The TPPPA is uniquely situated to provide the Court with a holistic view of the applicable rules and industry practices at issue in this litigation. Unlike banks which have clearly identifiable regulators, no federal regulator directly supervises payment processors and there is not a body of federal law that is particular to payment processors. As a result, their conduct is governed by well-established industry rules for guidance. The industry rules governing payment processors are the NACHA Rules.

The 2016 NACHA Guidelines incorporate what the industry recognizes as all of the federal rules and regulations relevant to this segment of the industry, including the following: the Uniform Commercial Code Article 4 (which governs check transactions) and Article 4A (which governs funds transfers), and the Electronic Funds Transfer Act (“EFTA”) as implemented by Regulation E. 2016 NACHA Operating Guidelines Chapter 2, Legal Framework. Certain other activities related to ACH payments are affected by The Right to Financial Privacy Act, Regulation D regarding reserve requirements, Regulation CC regarding funds availability, and other regulatory agency directives. Relationships between the consumer as Receiver and the RDFI are generally governed by Regulation E (12 C.F.R. Part 204) and the account agreement. These laws, coupled with industry standards required under the NACHA Rules, govern all transactions in the ACH network.

For more than the past decade, third party payment processors, processing ACH payments through the Automated Clearing House, have looked to NACHA, the administrator and rulemaking body of the ACH Network, for guidance on how to conduct ACH transactions. NACHA is an industry association whose members are direct member financial institutions and regional payments associations that represent the voice of small financial institutions across the country. NACHA membership proposes changes to the NACHA Rules and these rules are amended through a balloting process. The NACHA Rules change frequently throughout the year. NACHA updates and publishes the NACHA Operating Rules & Guidelines on an annual basis. In 2004, NACHA began defining the role of third party payment processors in its rules. “Third-Party Senders” are a subset of third party payment processors that process payments in the ACH Network.

In its Complaint against Defendants, the Bureau acknowledges that the NACHA Rules govern the transactions at issue. Nonetheless, the Bureau fails to plausibly allege that Defendants violated the NACHA Rules. Instead, the Complaint alleges that Intercept violated the CFPA's prohibition of unfair conduct without identifying the underlying violation of the NACHA Rules. In other allegations, the Complaint appears to impose obligations on payment processors that do not exist in the NACHA Rules, or did not exist in the NACHA Rules at the time of the alleged offense(s). In the remaining allegations, the Bureau uses distinct payment terms, such as "return rate" and "unauthorized returns," interchangeably when such concepts are separate and distinct.

Many regulatory agencies, including the Bureau, advise that a risk-based approach should be utilized in conducting due diligence, especially with regard to high-risk industries. However, no regulatory agency, including the Bureau, has promulgated through the rule-making process substantive, prescriptive guidance on such expectations. Instead, the industry and most regulatory bodies continue to use the NACHA Rules to guide an analysis of the appropriate conduct in this area. Although the Bureau has been engaged in enforcement efforts as an alternative rule-making process, these instances of one-off rulemaking add greater confusion, complexity and costs to the already complex and rapidly evolving electronic payment ecosystem that is particularly subjective. The glaring omission in this matter is an express allegation by the Bureau that Intercept's conduct violated the clear requirements as established by the NACHA Rules.

III. DISCUSSION

A. Overview

Because no federal regulator directly supervise Third-Party Senders, Third-Party Senders processing ACH payments are bound by the NACHA Rules, which as previously discussed, are a set of rules that incorporate various federal rules, regulations, and industry standards related to this area. The Bureau acknowledges this in its Complaint when it alleges that third party processors are governed by “[i]ndustry rules and guidelines.” Compl. ¶ 38.

The TPPPA believes that each third party processor must follow all pertinent rules. Accordingly, the TPPPA has attached, as Exhibit A, relevant portions of the NACHA Rules during the relevant time periods along with an explanation of all of the key parties in a payment processing relationship. *Miller v. Redwood Toxicology Lab., Inc.*, 688 F.3d 928, 931 n.3 (8th Cir. 2012) (“While courts primarily consider the allegations in the complaint in determining whether to grant a Rule 12(b)(6) motion, courts additionally consider matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned; without converting the motion into one for summary judgment.”) (citations omitted).

B. The Participants in a Transaction

By way of background, please find the following list of the participants in a payment transaction along with a description of their respective roles:

(1) **Originator**: A merchant who initiates ACH payment instructions directly through an ODFI or Third-Party Sender that will allow the Originator to send or receive payments to the Receiver. See 2016 NACHA Operating Rules § 8.68 “Originator.”

(2) **Receiver:** A customer or vendor of the Originator who is paying or being paid by the Originator who authorizes the Originator to facilitate such payments. *See* 2016 NACHA Operating Rules § 8.81 “Receiver.”

(3) **Originating Depository Financial Institution (“ODFI”):** A bank used by the Originator or Third-Party Sender that transmits payment instructions from the Originator (or Third-Party Sender) to an ACH Operator. *See* 2016 NACHA Operating Rules § 8.66 “Originating Depository Financial Institution” or “ODFI.”

(4) **ACH Operator:** An entity that acts as a central facility for the clearing, delivery, and settlement of Entries (transactions) between or among the ODFIs and RDFIs. *See* 2016 NACHA Operating Rules § 8.11 “Automated Clearing House Operator” or “ACH Operator.”

(5) **Receiving Depository Financial Institution (“RDFI”):** The Receiver’s bank that receives ACH payment instructions and takes the funds from or makes deposits to the Receiver’s account. *See* 2016 NACHA Operating Rules § 8.83 Receiving Depository Financial Institution” or “RDFI.”

(6) **Third-Party Sender:** (referred outside the ACH Network as Third Party Payment Processors) A person who is not the Originator, but acts as an intermediary in transmitting Entries (described below) between an Originator and an ODFI, or another Third-Party Sender. A Third-Party Sender must have an Origination Agreement with the ODFI as well as with the Originator of the Entry. *See* 2016 NACHA Operating Rules § 8.106 “Third-Party Sender.”

(7) **Entry**: an order or request for the transfer of money to the deposit account of a Receiver, or for the withdrawal of money from the deposit account of a Receiver. *See* 2016 NACHA Operating Rules § 8.37 “Entry.”

C. Overview Of A Transaction Using A Third-Party Sender

In a typical ACH transaction involving a Third-Party Sender, a Receiver initiates an Entry with the Originator by authorizing the Originator to debit a certain amount of money from the customer’s account at certain times from a certain bank account. The Originator sends the Entry to its Third-Party Sender to debit the Receiver’s bank account. The Third-Party Sender transmits the Entry to its own bank, which is the ODFI. The ODFI sends the debit Entry to its ACH Operator. The ACH Operator transmits the Entry to the Receiver’s bank, known as the RDFI. The RDFI then deducts the amount of the Entry from the Receiver’s account and sends the money back to the Third-Party Sender through the ODFI. The Third-Party Sender then remits a credit for the amount of the debit back to the Originator through the settlement process.

The process described above is regulated by the NACHA Rules. All parties using the ACH Network must agree to be bound by the NACHA Rules and the laws of the United States. The 2016 NACHA Guidelines, which are used to implement the NACHA Rules, state that the following laws and regulations are applicable to the ACH network: the Uniform Commercial Code Article 4 (which governs check transactions) and Article 4A (which governs funds transfers), and the EFTA as implemented by Regulation E. 2016 NACHA Operating Guidelines Chapter 2, Legal Framework. Certain other activities related to ACH payments are affected by The Right to Financial Privacy Act, Regulation D regarding reserve requirements, Regulation CC regarding funds availability, and other regulatory agency directives. Relationships between

the consumer as Receiver and the RDFI are generally governed by Regulation E of EFTA (12 C.F.R. Part 204) and the account agreement.

D. Responsibilities of Banks in the ACH System

The NACHA Rules explicitly recognize that ODFIs are the entry points into the ACH Network, and these financial institutions are responsible for those parties' (Originators and Third-Party Senders) compliance with the NACHA Rules. 2014 NACHA Operating Rules § 2.1. "In this way, ODFIs are the 'gatekeepers' of the ACH Network." *Dillon v. BMO Harris Bank, N.A.*, 16 F. Supp. 3d 605, 611 (M.D.N.C. 2014).

Before any Entry is initiated, the Originator and the Third-Party Sender (if the Originator transmits entries through a Third-Party Sender) must enter into an Origination Agreement. The Origination Agreement, must include, at a minimum, each of the following: (1) the Originator must authorize the ODFI to originate entries on behalf of the Originator to Receivers' accounts; (2) the Originator must agree to be bound by the NACHA Rules; (3) the Originator must agree not to originate entries that violate the laws of the United States; (4) any restrictions on the types of entries that may be originated; (5) the ODFI has the right to terminate or suspend the agreement for breach of the NACHA Rules in a manner that permits the ODFI to comply with the NACHA Rules; and (6) the ODFI has the right to audit the compliance with the Origination Agreement and these NACHA Rules. *See* 2016 NACHA Operating Rules § 2.2.2 "ODFI Agreement with Originator, Third-Party Sender, or Sending Point."

E. Returns and "Unauthorized" Returns

The NACHA Rules define a return as a credit or debit Entry initiated by an RDFI that returns a previously originated credit or debit Entry to the ODFI. 2016 NACHA Operating Rules § 8.92. The Bureau is correct in stating that a return can occur for many different reasons, many

of which have nothing to do with fraud, unlawful conduct by the Originator, or an unauthorized return. *See* Compl. ¶ 59. For example, a payment can be returned if: it cannot post to the account because it has a bad account number; the account is closed; the account has been frozen by the RDFI; the Receiver placed a stop payment on the account; there were insufficient or uncollected funds in the account to honor the Entry, to name a few. These examples of ACH returns are very similar to check return reasons because they are Entries attempting to post to the Receiver's checking or savings account. Like checks, most returns are required to come back to the ODFI within two days.

Sometimes an Entry is returned for trying to post to the Receiver's account and the Receiver claims that the Entry was not authorized or the authorization had been revoked. This type of return reason can be an indicator of an issue with the Originator, but can also be used by the Receiver to avoid making a payment or to be credited back for a payment already made that was truly authorized. These returns can indicate either merchant or consumer fraud, or a simple operations error.

There are special types returns that are similar to credit card returns (known as "chargebacks"). Chargebacks or unauthorized returns are Entries that have not been authorized by the Receiver, or the authorization is improper or has been revoked. Regulation E of the EFTA governs consumer authorizations and consumer returns. Regulation E generally provides the consumer 60 days to return these Entries they claim are unauthorized and receive credit through the ACH network. 12 CFR 205.11(b).

F. NACHA Rules on Procedures for Unauthorized Returns

“Unauthorized Returns” and “Returns” are separate and distinct concepts under the NACHA Rules. The NACHA Rules, as described in more detail below, proscribe specific steps that must be followed by ODFIs in the event that NACHA questions “unauthorized returns” that appear to exceed a certain threshold amount. On March 21, 2008, the NACHA Rules were amended to provide NACHA, under its sole discretion, the authority to require specific information about an Originator or Third-Party Sender that it believes may have greater than 1% of their total debit entries returned as unauthorized (including authorization revoked) over a 60 day period. This new rule, called the ODFI Reporting Requirement, requires an ODFI to respond to NACHA within 10 days of NACHA’s written request with proof that the Originator or Third-Party Sender did or did not exceed the 1% threshold. If the 1% threshold was exceeded, the ODFI must provide NACHA with a plan for reducing the unauthorized return rate to the acceptable level of 1% or below. 2008 NACHA Operating Rules Appendix Eleven – Rules Enforcement § 11.2 “ODFI Reporting Requirements.” The ODFI (at that time) has 60 days to return the unauthorized return rate to 1% or less and is required to maintain the unauthorized return rate at or below the 1% threshold for 180 days. If the ODFI is not successful in meeting either of these requirements and continues to process for the offending party, NACHA has the authority to enforce a “Class 2” rules violation, with fines of up to \$100,000 per month against the ODFI. If the violation continues for three consecutive months, the violation is escalated to a “Class 3” rules violation with fines of up to \$500,000 per month. In Class 3 rules violations, the ACH Rules Enforcement Panel has the authority to suspend the Originator from originating in the ACH Network. The suspension can only be lifted by the ACH Rules Enforcement Panel. On March 15, 2013, the 60-day timeframe to reduce the unauthorized return rate to 1% or below was

reduced to 30 days. This reduction allows enforcement procedures (i.e., fines) to occur more quickly. The rule remained unchanged until September 18, 2015—as stated in the Complaint—when the unauthorized return rate was reduced to .5%.

This rule is frequently misunderstood. Many believe that the 1% unauthorized return rate is an automatic requirement to terminate when in fact the threshold triggers the ability for NACHA to request information and require the rate to be reduced.

G. Responsibilities Of Originators In The ACH System

Originators must abide by the NACHA Rules, which include, among others, agreeing not to originate entries that violate the laws of the United States. 2016 NACHA Operating Rules NACHA Operating Rules § 2.2.2 “ODFI Agreement with Originator, Third-Party Sender, or Sending Point.” The NACHA Operating Rules also require Originators to obtain authorization from the Receiver to originate one or more entries to the Receiver’s account. 2016 NACHA Operating Rules § 2.3.1 “General Rule – Originator Must Obtain Authorization from Receiver.” An authorization to debit a consumer’s account through the ACH Network must be in writing (as required by the EFTA), “readily identifiable as an authorization [and] its terms must be clear and readily understandable.” *Id.* Frequently, the authorization is contained in contract like an automobile loan where the consumer has agreed to make payments by Direct Debit, a recurring preauthorized debit, to a Receiver’s account. The NACHA Rules add that “the authorization must provide that the Receiver may revoke the authorization only by notifying the Originator in the manner specified in the authorization.” *Id.*

H. Responsibilities Of Third-Party Senders.

In the consumer lending context, Third-Party Senders deal directly with lenders/Originators. They have limited information about the consumer (or borrower/Receiver).

This information, which is in the ACH Entry, is the consumer's account number, routing number, amount to be debited from the consumer's account, the date of the debit, and, in some instances, the name of the customer. The Third-Party Sender does not have any information confirming the state in which the consumer resides. The lender/Originator sends a credit entry to the Third-Party Sender to forward to the ODFI to originate into the ACH network to the RDFI that then deposits the credit (loan) into the borrower's/Receiver's account. Later, based on the terms of the agreement and the payment authorization, neither of which the Third-Party Sender has in their possession, the lender/Originator sends a debit entry to the Third-Party Sender to extract a payment on the loan from the borrower/Receiver. If the entry to the Receiver's account cannot successfully post to the account, the entry is returned and any credit that the lender/Originator had received will be reversed. This return can be for any reason – insufficient funds, stop payment, closed account or the borrower/Receiver claimed the debit was unauthorized. Importantly, Third-Party Senders do not interface with consumers at any time during the transaction.

That said, the Third-Party Sender must agree that, before permitting an Originator to originate any entry directly or indirectly through the ODFI, it will enter into an agreement with the Originator that satisfies the NACHA Rules. The ODFI warrants that any transaction that is not authorized will be covered and the Receiver will be made whole, including any fees for overdrafts, etc., that resulted from the unauthorized debit. If it is an illegal product, it is considered an invalid authorization and the Entry can be returned as unauthorized. These warranties extend beyond the 60 day right to return as unauthorized. Those beyond the 60 day timeframe cannot be returned within the network, but the consumer is still allowed to make a

claim to the ODFI for breach of warranty. This warranty assures the consumer is protected and makes the ACH network one of the safest payment mechanisms for consumers.

IV. THE COMPLAINT LACKS A PREDICATE ALLEGATION, NAMELY INTERCEPT VIOLATED NACHA RULES.

The Bureau alleges throughout the Complaint that Intercept violated the unfairness prong of the CFPA. The term unfair means: (A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c). Because payment processors have been governed by the NACHA Rules with respect to the manner in which they should conduct themselves, any allegation that the payment processors engaged in unfair conduct must be grounded in an alleged violation of the NACHA Rules. Otherwise, payment processors like Intercept and other members of the TPPPA would be deprived of their due process rights. *See F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012) (“A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.”); *Stahl v. St. Louis*, 687 F.3d 1038, 1041 (8th Cir. 2012) (holding a city ordinance offended the Due Process Clause because it fails to provide fair notice of what is forbidden and “does not provide people with fair notice of when their actions are likely to become unlawful”); *Humes v. LVNV Funding, LLC (In re Humes)*, 496 B.R. 557, 579 (Bankr. E.D. Ark. 2013) (noting the phrase “unfair” “is as vague as they come”) (citing *Belser v. Blatt, Hasenmiller, Leibsker & Moore*, 480 F.3d 470, 474 (7th Cir. 2007)).

The Complaint alleges that Intercept engaged in unfair conduct by failing to sufficiently conduct due diligence on some merchants, “meaningfully investigate” alleged “red flags,” or terminate its relationship with merchants arising out of these red flags. Compl. ¶ 39. Although

the Complaint recognizes that payment processors were required to follow the NACHA Rules, the Complaint fails to allege that Defendants' alleged conduct violated these Rules, and the Complaint fails to identify the circumstances under which a payment processor was required to investigate a merchant or terminate its relationship with the merchant under the NACHA Rules.

As stated above, NACHA has had rules in place since 2008 (2 years before the Bureau existed) that dictated the circumstances under which an Originator must be suspended from the ACH Network. The NACHA Rules were the *only* rules available to Defendants and other Third-Party Senders during the relevant time period, as the Bureau and other federal agencies have never notified Third-Party Senders about the circumstances under which an Originator must be investigated or terminated. As stated above, the only guidance available to Third-Party Senders with respect to investigations and terminations was the following:

- (1) The Originator or Third-Party Sender must have greater than 1% of their total debit entries returned as unauthorized over a 60 day period in order to trigger a potential NACHA inquiry;
- (2) NACHA must send a written request to the ODFI asking for the ODFI to explain or submit evidence revealing whether the 1% threshold was exceeded;
- (3) The ODFI must respond to NACHA within 10 days of NACHA's request stating that the limit was not exceeded, or have a plan for reducing the unauthorized return rate if the limit was exceeded;
- (4) The ODFI had 60 days to reduce the unauthorized return rate to 1% or below and must sustain that level for 180 days;
- (5) If the ODFI was not successful, then the ODFI could be fined up to \$100,000 each month for up to three months;

(6) If the ODFI was still not successful after this three-month period, then the fine could go up to \$500,000 per month and the Originator could be suspended from the ACH Network.

Here, the Complaint simply alleges that Intercept violated the CFPA by failing to properly investigate, and failing to terminate merchants that had what the Bureau considers to be high return rates. The Bureau, however, fails to allege that Intercept violated the NACHA Rules, which were the only guidance available to Intercept at the time with respect to the issues alleged in the Complaint. The Bureau does not allege the circumstances under which a third party payment processor must participate in an investigation or terminate of a merchant arising out of high return rates under the NACHA Rules. The Bureau does not even allege that Intercept was notified that the unauthorized returns alleged in the Complaint triggered an obligation to initiate the procedures outlined above. Without these critical allegations, the Complaint amounts to a violation of Intercept's—and every thirds party payment processor's—due process rights.

For example, the Bureau alleges as a part of its CFPA claim that Intercept artificially deflated the percentage of returns that it received by using a program called Xcelerated Returns. Xcelerated Returns is a type of program commonly used in the payment processing industry. In exchange for a fee, a payment processor can query a consumer's account number in the Xcelerated Returns database to determine if there had been any derogatory return behavior from the consumer owning the account of the entry in the past. This allowed the client or Intercept with the opportunity to make a decision to remove the entry before attempting to place a debit that was likely to return into the ACH network. A positive hit was an indication that the RDFI had returned this consumer's payments in the past for any number of reasons including a closed account, bad account number, or even a history of unauthorized returns to other Originators,

indicating the likelihood of consumer fraud. This product does not indicate that the lender had issues, but rather that the *borrower* had derogatory return behavior, generally with a different lender. While the Bureau alleges that the return rate would have been higher if Intercept had not used the program to eliminate processing for consumers who had a derogatory history, the Bureau fails to allege that Intercept's use of the program violated the NACHA Rules in place at the time. As stated above, conduct cannot be "unfair" as matter of law if the conduct was not unlawful or forbidden by the rules in place at the time of the alleged conduct.

V. THIRD PARTY PAYMENT PROCESSORS ARE NOT "COVERED PERSONS" UNDER THE CFPA.

In paragraph 9 of the Complaint, the Bureau alleges that "Intercept is a covered person under the CFPA because it provides payments or other financial data processing products or services to consumers by technological means, including through a payments system or network used for processing payments data." The CFPA defines "covered persons" as "any person that engages in offering or providing a consumer financial product or service." 12 U.S.C. §5481(6)(A). The CFPA defines a consumer financial product or service to include "providing payments or other financial data processing products or services to a consumer by any technological means...." *Id.* at §5481(15)(A)(vii). Payment processors like Intercept never interact with consumers, nor do they provide payments or other financial data processing products to consumers. Third party payment processors only provide these services for merchants and merchants are not consumers.

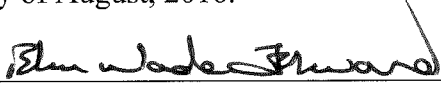
Throughout the Complaint, the Bureau details the processing relationship between Intercept and merchants—lenders and debt collectors in particular—and does not mention any processing services for consumers. Because the substantive allegations in the Complaint reveal that Intercept did not provide processing services for consumers and is therefore not a "covered

person,” the CFPB’s effort to expand the unambiguous language of §5536(6) should be rejected. *See Consumer Financial Protection Bureau v. Universal Debt & Payment Solutions, LLC*, et al., Case No. 1:15cv0859 (N.D. Ga. Sept. 1, 2015) (rejecting the CFPB’s argument that payment processors are “covered persons” under the CFPA because the substantive allegations in the CFPB’s complaint revealed that the payment processors only provided processing services for merchants, not consumers).

VI. CONCLUSION

For all of the foregoing reasons, the Complaint must be dismissed.

RESPECTFULLY SUBMITTED this 15th day of August, 2016.



Robin Wade Forward (#05324)
STINSON LEONARD STREET LLP
811 East Interstate Avenue
Bismarck, ND 58503
Telephone: (701) 221-8603
Fax: (701) 221-8601
rob.forward@stinson.com

and

Keith J. Barnett
Georgia Bar No. 142340
Ashley L. Taylor
Virginia Bar No. 36521
C. Reade Jacob, Jr.
Virginia Bar No. 87660
Troutman Sanders LLP
600 Peachtree Street, N.E., Suite 5200
Atlanta, Georgia 30308-2216
(404) 885-3423
(404) 885-3900 (Fax)

*Counsel for Third Party Payment
Processors Association*