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ggalaviz
By _____, Deputy
Case Number:
34-2022-00319099

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12 HELEXO PTE LIMITED, a Singapore
13 company,

14 Plaintiff,

15 v.

16 KOTARO SHIMOGORI, an individual;
17 COMCOPIOUS LIMITED, a Hong Kong,
18 China Company *doing business as* ICANPAY;
19 COMCOPIOUS CALIFORNIA, INC., a
20 California corporation; ICANPAY
21 CALIFORNIA, INC., an FTB suspended
22 California corporation; PAN DIGITAL
23 NETWORK LIMITED fka COMCOPIOUS
24 UK LIMITED, a UK limited liability company,
25 and DOES 1 through 25, inclusive,

26 Defendants.

Case No.

COMPLAINT FOR:

- (1) FRAUD
- (2) CONVERSION
- (3) MONEY HAD AND RECEIVED
- (4) VIOLATION OF PENAL CODE § 496
- (5) BREACH OF CONTRACT
- (6) BREACH OF CONTRACT
- (7) UNFAIR COMPETITION IN
VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE §
17200 *et seq*

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff HELEXO PTE LIMITED ("Plaintiff" or "Helexo") alleges against Defendants
2 KOTARO SHIMOGORI, PAN DIGITAL NETWORK LIMITED fka COMCOPIOUS, LIMITED
3 *doing business as* ICANPAY, COMCOPIOUS CALIFORNIA INC., ICANPAY CALIFORNIA
4 INC., and DOES 1-25 (collectively, "Defendants"), as follows:

5 **INTRODUCTION**

6 1. This case follows on the heels of a previously filed lawsuit against a serial conman
7 operating in the payment processing space, defendant Kotaro Shimogori ("Shimogori"). Shimogori,
8 a Sacramento resident, has for years and continues to fleece the international merchant community
9 of millions of dollars through a myriad of shell companies, fraudulent promises, forged documents
10 and employment of fake identities.

11 2. On October 17, 2018, five (5) companies filed suit against these same named
12 defendants for the very acts now perpetrated upon Helexo in a matter entitled *Life-FX Products LLC*
13 *vs. Comcopious Limited, et al.*, Case No. 34-2018-00242853-CU-CO-GDS (the "Life-FX
14 Litigation"). In that case, the five plaintiffs claimed that Defendants relieved them of \$841,000
15 through fraudulent payment processing services resulting in outright disappearance of their funds.
16 In the course of those plaintiffs' investigation, it was revealed that Shimogori was using a fake name,
17 "Bruce Lee," to create the impression that someone other than himself was operating the processing
18 companies and interacting with the merchants. Similarly, Shimogori was signing agreements using
19 the name "Kaelem Shadeh" as a purported director of a defendant entity when Shadeh had resigned
20 years prior to Shimogori appropriating his name for execution of the agreements. All of these plain
21 truths about Shimogori's elaborate web of fraud were substantively uncontested in the Life-FX
22 Litigation. Now, no more than three (3) years later, Shimogori is back to his old practices, having
23 changed *nothing* in their implementation. Shimogori has stolen no less than \$1.3 million from
24 Plaintiff.

25 3. This action seeks to rectify the theft of Plaintiff's funds and punish Shimogori for his
26 unapologetic and continuing fraudulent acts.

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PARTIES

4. Plaintiff Helexo Pte Limited ("Plaintiff" or "Helexo") is a Singapore company.

5. Defendant COMCOPIOUS, LIMITED *doing business as* ICANPAY ("ICANPAY") is, and at all times relevant was, a private company organized under the laws of Hong Kong, China, with its principal place of business at Shimogori's home, located at 1506 Gorman Drive, Carmichael, California 95608. ICANPAY does business throughout Europe and North America, including but not limited to, within California. ICANPAY markets its services to California businesses, regularly contracts with California companies, and uses its California subsidiaries to provide services to its customers throughout Europe and North America.

6. Defendant KOTARO SHIMOGORI ("Shimogori") is, and at all times relevant was, an individual residing at 1506 Gorman Drive, Carmichael, California 95608. Shimogori is a director, controlling shareholder and/or beneficial owner of each of the Corporate Defendants. Attached hereto as **Exhibit A** is a true and correct copy of ICANPAY's Annual Return, filed with the Hong Kong Companies Registry on or about May 25, 2018, which identifies Kotaro Shimogori as ICANPAY's sole director and the owner of 13,000 out of 15,000 total issued shares. Attached hereto as **Exhibit B** is a true and correct copy of CC CA's articles of incorporation, filed with the California Secretary of State on April 25, 2017, which identify Kotaro Shimogori as the registered agent for service of process and corporate filer for CC CA.

7. Defendant COMCOPIOUS CALIFORNIA, INC. ("CC CA"), is, and at all times relevant was, a California corporation with its principal place of business located at 1506 Gorman Dr., Carmichael, California 95608, which is Shimogori's home.

8. Defendant ICANPAY CALIFORNIA, INC. ("ICP CA") is, and at all times relevant was, a California corporation with its principal place of business located at 1506 Gorman Dr., Carmichael, California 95608, also at the home of Shimogori. Its present status is "FTB Suspended."

9. PAN DIGITAL NETWORK LIMITED, is a UK limited liability company, formerly known as COMCOPIOUS UK LIMITED ("PDNL"), with its principal place of business located at

1 1506 Gorman Dr., Carmichael, California 95608, also at the home of Shimogori. According to the
2 Memorandum of Understanding, Kotaro Shimogori is a director and Person of Significant Control
3 of Pan Digital.

4 10. ICANPAY, CC CA, and ICP CA are referred to collectively as the "Corporate
5 Defendants."

6 11. Each of the Corporate Defendants is an alter ego of Shimogori. At all times
7 mentioned herein, there existed a unity of interest in ownership between each of the Corporate
8 Defendants, on the one hand, and Shimogori, on the other hand, such that the individuality and
9 separateness between them ceased and each of the Corporate Defendants is the alter ego of
10 Defendant Kotaro in that, among other things: (a) Shimogori controlled, dominated, managed and
11 operated each of the Corporate Defendants as his alter ego; (b) Shimogori made all material
12 decisions pertaining to each of the Corporate Defendants; (c) there has been a failure to comply with
13 or observe the formalities of corporate formation and/or operation of each of the Corporate
14 Defendants; (d) each of the Corporate Defendants was inadequately capitalized to carry out its
15 intended business and pay its debts and obligations as they fell due; and (e) the individuality of each
16 of the Corporate Defendants is a total sham and fiction such that upholding its corporate nature and
17 allowing Shimogori to escape personal liability for any entity debts would sanction a fraud or
18 promote an injustice and should therefore be disregarded pursuant to the doctrine of piercing the
19 corporate veil. Indeed, the most recent filing for PDNL demonstrates the current amount owed to
20 creditors to be £8,360,000 and net assets of negative £7,850,000. *See Exhibit A.*

21 12. The true names and capacities, whether individual, plural, corporate, partnership,
22 associate, or otherwise, of DOES 1 through 25, inclusive, are unknown to Helexo who therefore sue
23 said defendants by such fictitious names. The full extent of the facts linking such fictitiously sued
24 defendants is unknown to Helexo. Each of the defendants designated herein as a DOE was, and is,
25 negligent, or in some other actionable manner, responsible for the events and happenings hereinafter
26 referred to, and thereby negligently, or in some other actionable manner, legally and proximately
27 caused the hereinafter described injuries and damages to Helexo. Helexo will hereafter seek leave

1 of the Court to amend this Complaint to show the DOE defendants' true names and capacities after
2 the same have been ascertained.

3 13. Defendants, including DOES 1 through 25, inclusive, were agents, servants,
4 employees, successors in interest, and/or joint venturers of their co-defendants, and were, as such,
5 acting within the course, scope, and authority of said agency, employment and/or venture, and that
6 each and every defendant, as aforesaid, when acting as a principal, was negligent in the selection of
7 each and every other defendant as an agent, servant, employee, successor in interest, and/or joint
8 venturer. Each of the defendants designated herein as DOE aided and abetted, conspired with, and/or
9 took part in, and participated with, each Defendant in all matters referred to herein, and was in some
10 manner responsible for the injuries and losses suffered by Helexo.

11 **VENUE AND JURISDICTION**

12 14. Venue is proper in Sacramento County pursuant to California Code of Civil
13 Procedure Sections 395 and 410.10 because several of the Defendants reside and all Defendants do
14 business in Sacramento, California, including ICANPAY, CC CA, ICP CA, PDNL and Shimogori,
15 and a substantial part of the acts, events and omissions underlying this dispute took place within
16 California, including within the County of Sacramento. Further, in the prior matter initiated against
17 these same Defendants and based on the same structure, the presiding Court concluded that venue
18 was proper in Sacramento Count. *See Life-FX Products LLC vs. Comcopious Limited, et al.*, Case
19 No. 34-2018-00242853-CU-CO-GDS.

20 15. This Court has jurisdiction over the subject matter of this lawsuit because the amount
21 in controversy, exclusive of interest and costs, exceeds the \$25,000 minimum jurisdictional limit of
22 the Court. Moreover, Defendants have purposely availed themselves of, and have substantial
23 contacts with, the forum by virtue of organizing subsidiaries in California, marketing to California
24 businesses, entering contracts in California, providing essential services under those contracts from
25 California, and doing substantial business with other California businesses, including but not limited
26 to businesses within the County of Sacramento.

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1 **GENERAL ALLEGATIONS**

2 16. Helexo is a company based in Singapore. Like all online businesses, Helexo requires
3 the ability to accept customer credit card payments online for the purchase of their products, which
4 is what brought it to Shimogori.

5 ***OVERVIEW OF ICANPAY***

6 17. ICANPAY claims to be headquartered in Hong Kong, China, and describes itself as
7 “an agile technology services company that provides premium-quality data analysis tools,
8 application, integration and marketing services that help our customers and partners become and
9 remain the leaders of change.” In effect and reality, ICANPAY is little more than a shell organized
10 in Hong Kong, China, which transacts no ascertainable business in Hong Kong, China. Rather, the
11 overwhelming, if not exclusive, totality of its business activity is conducted from the California
12 home of its principal and operator, Shimogori. ICANPAY claims to do business both directly, and
13 indirectly through its “worldwide” group of subsidiaries, including CC CA, ICP CA,
14 COMCOPIOUS UK LIMITED (“CCL UK”) and ICANPAY UK LIMITED (“ICP UK”)
15 (collectively, “iCanPay Corporations”). Attached hereto as **Exhibits C and D** respectively are the
16 UK Companies House search results for CCL UK and ICP UK, which identify Kotaro Shimogori
17 as the sole officer of, and only person with significant control over, both CCL UK and ICP UK.

18 18. Defendants do business in the payments industry under the name “iCanPay.” The
19 iCanPay Website (www.icanpay.cn.com) describes iCanPay as “part of the global network of
20 companies owned by [ICANPAY].” According to the iCanPay Website, “We provide the best, most
21 secure and convenient payment settlement platform for your business” (hereinafter, the “iCanPay
22 Service”).

23 19. The iCanPay Website promotes the ease of obtaining a merchant account with
24 iCanPay, even for merchants, such as Helexo, doing business in so-called “High Risk Industries”:

25 **Merchant Accounts Made Easy**

26 iCanPay offers flexible payment processing and startup merchant account solutions, with
27 no geographical restrictions. Laborious account applications are also replaced by our
28 concise online form developed and certified by our acquiring banking partners. It’s simple,

1 affordable, and we can offer a merchant account for most products sold on the Net today.

2 **High Risk Industries**

3 If your business falls into one of the high-risk merchant industries, your company may
4 have been classified as a high-risk merchant. In fact, many e-commerce and online
5 merchants are termed high risk by processors, even though their traditional merchant
6 operations are not high risk. Our proprietary system allows for your application to be
7 approved within minutes.

8 **Backed By Visa and MasterCard Acquirers**

9 All iCanPay banking partners have been vigorously vetted by Visa and MasterCard. In
10 order to process any credit card transactions for our banking partners, iCanPay have also
11 been rigorously scrutinized and its systems and processes closely examined for security.
12 iCanPay is fully PCI compliant.

13 A true and correct copy of a Screenshot from the iCanPay Website is attached hereto as **Exhibit E**
14 and incorporated herein by this reference as though set forth in full.

15 20. The iCanPay Website promotes that "iCanPay can virtually be used for any business
16 you can dream of and imagine."

17 **THE MERCHANT AGREEMENT**

18 21. Helexo signed the Data, Logistics and Service Processing Agreement with
19 ICANPAY on April 22, 2020, (the "Processing Agreement"), a true and correct copy of which is
20 attached hereto as **Exhibit F** and incorporated herein by this reference as though set forth in full.

21 22. The Processing Agreement defines ICANPAY to mean "COMCOPIOUS, LIMITED
22 and/or any of its World-Wide subsidiaries or group companies of COMCOPIOUS, LIMITED."

23 23. The Processing Agreement defines "Purchase Price" to mean "the price payable by
24 the Customer(s) to [ICANPAY] for the good(s) and/or service(s) ordered by the Customer(s) from
25 [Plaintiff] minus any fees, charges and commission withheld by, or due to, the Financial
26 Institution(s)."

27 24. The Processing Agreement defines "Financial Institution" to mean the "entity that
28 processes the payment instructions received from the Customer by [ICANPAY] for the payment
method selected by the Customer and that, following authorization, effects payment of the Purchase
Price."

25. Paragraph 2.1 of the Processing Agreement obligates ICANPAY to pay each Plaintiff the "total outstanding settled Purchase Price for the account ... after deduction of ... (a) Refunds (Credit); (b) Chargeback's (sic); (c) any amount in order to meet any Deposit requirements; (d) in addition to (a) and (b) above, any fines, fees, charges or commission to be paid by [Plaintiff] to Financial Institutions; and (e) any charges or amounts due to [ICANPAY] under the Agreement other than charges or amounts mentioned in (a) through (e) above. [ICANPAY] is entitled to set-off any indebtedness of [Plaintiff] towards [ICANPAY] and itself."

8 26. Paragraph 12.1 of the Processing Agreement contains a "Governing Law and
9 Jurisdiction" clause that states: "These terms and Conditions and/or the Agreement are governed
10 by, and shall be construed in accordance with the laws of Hong Kong, and all disputes arising out
11 of or connected with these Terms and Conditions and/or the Agreement shall be subject to the
12 exclusive jurisdiction of the competent court of Hong Kong, judging in first instance, and its
13 appellate courts, subject to appeal at Hong Kong's High Court of Justice." Hereinafter, paragraph
14 12.1 of the Processing Agreement is referred to as the "Forum Selection Clause."

15 ***PLAINTIFF'S EXPERIENCE WITH SHIMOGORI***

16 27. Helexo learned about the iCanPay solution in early 2020.

17 28. Based on iCanPay representations (via the iCanPay Website, social media and word
18 of mouth) about its ability to process payments in a way guaranteed to provide a secure, legal and
19 safe processing solution, Helexo agreed to try the iCanPay Service.

20 29. Thus, Helexo signed the Processing Agreement on April 22, 2020.

21 30. As was the case in Life-FX Litigation, at first, ICANPAY generally honored its
22 payment obligations by regularly making weekly payouts on all MIDs until he failed to do so, at
23 which point the parties agreed to a Memorandum of Understanding, as shall be discussed below,
24 which memorialized the amount outstanding and set forth a schedule for repayment.

25 31. In sum, for months and months, Shimogori has been giving Helexo the run around
26 and despite a myriad of promises, has paid ***nothing*** on the \$ 1,361.738.00 which remains due and
27 owing to Helexo.

Kotaro Shimogori Fraud Warning

Kotaro Shimogori has stolen in excess of \$500000.00+ from merchants who obtained merchant processing from one of his companies. No reason has been given for the theft of funds, outside of a story about his bank allegedly freezing his funds. He has become unresponsive to all attempts to contact him. His companies continue to process Credit Card transactions.

Do not be one of the merchants who gets scammed by this individual.

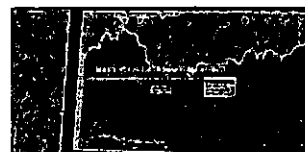
His Websites



www.icanpay.cn.com



www.comcopious.cn.com



www.shimogori.com



34. Moreover, Shimogori and his web of companies have pulled off the same exact scam in the Life-FX Litigation, using the same contracts, same fraudulent signatures and same misrepresentations.

35. In addition to defrauding merchants, Defendants operate in blatant violation of the rules and laws governing the payments system, as discussed in detail below. For example, based on a review of publicly available information, none of the ICANPAY entities is a registered Service Provider of Visa or MasterCard. Accordingly, ICANPAY is not authorized to market credit card processing services to merchants in the first instance. Moreover, ICANPAY's contracts and business practices violate Visa and MasterCard rules in numerous other respects.

36. Among other things, Shimogori opened a merchant account on behalf of Helexo, without its knowledge, through an illegal aggregate account, in violation of Card Brand Rules, and various state and Federal laws against credit card laundering and factoring. In addition, ICANPAY appears to be operating as an unlicensed Money Services Business engaged in Money Transmission in violation of California and Federal law, and also appears to be violating Anti-Money-Laundering (AML) laws.

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1 **OVERVIEW OF THE PAYMENTS SYSTEM**

2 **AND THE ROLE OF ACQUIRING BANKS AND SERVICE PROVIDERS**

3 37. In order to accept payment cards from consumers for the purchase of their Products,
4 businesses such as Helexo (referred to as “merchants” in the payment processing industry) must
5 first open a “merchant account” for payment processing services by entering a “merchant
6 agreement” with a member bank of MasterCard International, Inc., Visa USA, Inc., Discover
7 Financial Services, LLC, American Express and/or other networks (collectively the “Card Brands”).
8 Such member banks have direct agreements with the Card Brands that enable them to process
9 payments made by holders of debit and credit cards (“payment cards”) issued by the Card Brands
10 to purchase goods and services from “merchants” that contract with such member banks for
11 merchant processing services. This process is called “acquiring” and the banks are often referred to
12 as “acquirers.”

13 38. Acquirers, in turn, may contract with various types of third-party organizations as
14 service providers to provide certain types of processing related services to merchants under the
15 acquirer’s sponsorship with the Card Brands. For example, an acquirer may sponsor a Third-Party
16 Service Provider (“Service Provider”) as an Independent Sales Organization (“ISO”) to solicit
17 merchants for payment processing services on its behalf (including application processing, customer
18 service and statement preparation not affording access to account data or transaction data). However,
19 ISOs are prohibited from contracting directly with a merchant without the acquiring bank as a party
20 to the contract, and are also prohibited from accessing or handling merchant funds.

21 39. An acquiring bank may also sponsor a Service Provider as a Payment Facilitator to
22 facilitate the acquiring of transactions by the acquiring bank from “Submerchants” (MasterCard) or
23 “Sponsored Merchants” (Visa) (hereinafter “Submerchants”) by having transactions submitted
24 directly to the Payment Facilitator by the Submerchants for forwarding to the acquiring bank. Unlike
25 an ISO, a Payment Facilitator may contract directly with merchants, without the acquiring bank as
26 a party to the contract, and may receive and access merchant funds in order to pay Submerchants
27 directly. Common examples of Payment Facilitators include PayPal, Stripe and Square.

40. Both Visa and MasterCard alike maintain publicly available lists of their registered Service Providers (<https://www.visa.com/splisting/searchGrsp.do>; <https://www.mastercard.us/content/mccom/en-us/merchants/start-accepting/payment-facilitators.html/>). None of the ICANPAY entities appears on these lists. Accordingly, Helexo is informed and believes and based thereon allege that the ICANPAY entities are acting in direct violation of Card Brand Rules by marketing the ICANPAY Service and contracting with merchants to provide Visa and MasterCard credit card processing services, without being properly registered with the Card Brands to perform these services.

THE ICANPAY MERCHANT AGREEMENT DOES NOT CONSTITUTE A VALID AGREEMENT UNDER CARD BRAND RULES

41. As discussed above, Helexo applied directly to ICANPAY for payment processing services through the ICANPAY Website, and ICANPAY entered into the Data, Logistics and Service Processing Agreement" with Helexo to provide it with payment processing services for its online businesses. The Processing Agreement violates Card Brand Rules in numerous material respects. Publicly available links to the Card Brand Rules are as follows: Visa (<https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>) and MasterCard (<https://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf>).

42. Card Brand Rules mandate that an acquiring bank have a direct contractual relationship with each of its merchants. (See e.g., Visa Core Rule 1.5.2.1, MasterCard Rule 5.1.) While the Card Brand Rules provide that an ISO or other Service Provider *may* be a party to the Merchant Agreement, they provide that the acquirer *must* be a party to the Merchant Agreement, and prohibit the Service Provider from entering a separate or other agreement with the merchant. Card Brand Rules prohibit a Merchant Agreement from taking effect without approval by the acquirer. (MasterCard Rule 7.6.1.)

43. The only exception to these rules is where the Service Provider is a Payment Facilitator. In such cases, the Payment Facilitator may contract directly with the Submerchant, without the acquirer as a party; provided, however, that the "Submerchant Agreement" must

1 conform to the Card Brand Rules pertaining to Merchant Agreements generally, and must, *inter*
2 *alia*, clearly and conspicuously identify the acquirer; disclose contact information of the acquirer
3 that the Submerchant may use to address questions and concerns; and reflect that the Payment
4 Facilitator is entering into the Submerchant Agreement on behalf of and as an agent of the identified
5 acquirer. (MasterCard Rule 7.8.1.)

6 44. None of the ICANPAY entities is listed as a Payment Facilitator on the publicly
7 available lists of Visa and MasterCard Service Providers. Accordingly, Helexo is informed and
8 believes and based thereon alleges that ICANPAY violated Card Brand Rules by entering into the
9 Processing Agreement directly with Helexo, without any acquiring bank as a party. ICANPAY also
10 violated Card Brand Rules by failing to provide any name or contract information for the acquiring
11 bank, failing to identify the acquiring bank at all (much less clearly and conspicuously), and failing
12 to identify itself as an agent of the acquiring bank. Given these failures, ICANPAY also violated
13 Card Brand Rules prohibiting a Merchant Agreement from taking effect without approval by the
14 acquirer.

15 45. Card Brand Rules prohibit the Service Provider from having any access, directly or
16 indirectly, to any account for funds due to a merchant and/or funds withheld from a merchant for
17 chargebacks arising from, or related to, performance of a Merchant Agreement. Card Brand Rules
18 prohibit the acquirer from assigning, or otherwise transferring an obligation to pay or reimburse a
19 merchant arising from, or related to, performance of a Merchant Agreement to a Service Provider.
20 Card Brand Rules prohibit a Service Provider from subcontracting, sublicensing, assigning,
21 licensing, franchising, or in any manner extending or transferring to any third party, any right or
22 obligation of the Service Provider set forth in the Merchant Agreement. For example, MasterCard
23 Rule 7.3 provides that, "A Service Provider must not have access to any account for funds due to a
24 Merchant or withheld from a Merchant for chargebacks, with the exception of Payment Facilitators,
25 as set forth in Rule 7.8.2, "Obligations as Sponsor of Submerchants." A Customer must not assign
26 or transfer to a Service Provider an obligation to pay or reimburse a Merchant if the obligation arises
27 from Activity." Thus, while ISOs and other Service Providers may make recommendations to the

1 acquiring bank about how to handle merchant funds, the acquiring bank must directly collect and
2 control such funds. Card Brand Rules prohibit an acquirer from waiving, forgiving, releasing,
3 assigning, or failing to insist on strict performance of each of these requirements. (MasterCard Rule
4 7.6.1)

5 46. The only exception is in the case of a Payment Facilitator. An acquirer may directly
6 pay or credit a Payment Facilitator on behalf of a Submerchant; provided, however, that a Payment
7 Facilitator *must* pay each Submerchant for all transactions the Payment Facilitator submits to its
8 acquirer on the Submerchant's behalf, *which obligation is not discharged with regard to a*
9 *transaction until the Submerchant receives payment from the Payment Facilitator,*
10 *notwithstanding any payment arrangement between the Submerchant and the Payment*
11 *Facilitator or between the Payment Facilitator and its acquirer.* (Visa Core Rule 1.5.8.2,
12 MasterCard Rule 7.8.2)

13 47. Again, none of the ICANPAY entities is listed as a Payment Facilitator on the
14 publicly available lists of Visa and MasterCard Service Providers. Accordingly, Helexo is informed
15 and believes and based thereon alleges that ICANPAY violated Card Brand Rules by accessing and
16 handling their merchant funds, and making payment to them directly rather than through the
17 acquiring bank, and utilizing third parties, such as Shimogori's personal bank account, to receive
18 and forward merchant funds and reserves from the acquiring bank to iCanPay's control for
19 distribution to the merchants.

20 **ICANPAY IS ALSO OPERATING IN VIOLATION OF CROSS-BORDER PROCESSING**
21 **RULES AND ENGAGING IN AN ILLEGAL TRANSACTION LAUNDERING**

22 48. Despite representing the lawfulness, legitimacy and transparency of the ICANPAY
23 Service, and the vetting of iCanPay and its acquirers by Visa and MasterCard, ICANPAY and its
24 acquirers are operating in blatant violation of Card Brand Rules against Cross-Border Processing.
25 For example, Card Brand Rules prohibit an acquirer from accepting or submitting transactions into
26 Interchange from merchants outside its jurisdiction. Card Brand Rules also prohibit Payment
27 Facilitators from contracting with a Submerchant that is outside the Country where the Payment

1 Facilitator and its acquirer are located. (Visa Core Rules 1.5.1.1). Here, by using an undisclosed
2 acquirer from Asia to process transactions from merchants in California, Europe and Canada,
3 ICANPAY is operating in plain violation of these Cross-Border Processing rules.

4 49. Further, as alleged in the Life-FX Litigation, ICANPAY is also operating in plain
5 violation of Card Brand Rules against transaction laundering, which is also known as factoring or
6 aggregation. As alleged in the Life-FX Complaint, in a "Confidential" August 2017 email
7 personally from Kotaro to iCanPay's ISOs, Kotaro wrote: "as most of you already know, we just
8 launched our 3DSv MID with a generous USD\$50 million per month cap. We are adjusting filters
9 with the acquiring Bank so we can achieve the high approval ratios that we demand from our
10 partners." This is significant because this communication evidences the fact that ICANPAY is
11 aggregating transactions from multiple merchants and submitting them through a single merchant
12 account, or Submerchant account, held in iCanPay's or another merchant's name, in order to conceal
13 the nature of its processing activity from the Card Brands. Hence, the USD \$50 million per month
14 volume-cap. This conduct violates numerous Card Brand Rules (*see, e.g.*, Visa Core Rules 1.10.1.3;
15 10.3.1.1; and 10.11.2.5; MasterCard Rules 5.12 and 7.8.2; *see also* MasterCard Rule 7.1, describing
16 Merchant Monitoring Program Service: "Detection of Transaction laundering and the monitoring of
17 related activity whereby a Merchant or Submerchant processes Transactions on behalf of another."

18 50. Merchant or Submerchant with whom the Acquirer or the Acquirer's Payment
19 Facilitator does not have a Merchant Agreement or Submerchant Agreement. Transaction
20 laundering is also referred to as factoring or Transaction aggregation.")

21 51. ICANPAY's conduct in aggregating and factoring transactions also violates a host
22 of U.S. Federal laws and regulations, including the Federal Trade Commission Act and the
23 Telemarketing Sales Rule. The Department of Treasury's Financial Crimes Enforcement Network
24 ("FinCEN") regards such factoring activities as a variation on money laundering. Depending on the
25 particular facts, such conduct may variously violate 18 U.S.C. § 1029 (factoring), 18 U.S.C. § 371
26 or § 1029(b)(2) (conspiracy), 18 U.S.C. § 1343 (wire fraud), or 18 U.S.C. § 1344 (bank fraud).
27 Maximum penalties range from 10-to-30-years, plus up to \$1,000,000, per offense.

1 **ICANPAY IS ACTING AS AN UNLICENSED MONEY TRANSMITTER**
2 **IN VIOLATION OF CALIFORNIA LAW**

3 52. In enacting the Money Transmission Act, the California Legislature found and
4 declared that: (a) money transmission businesses conduct a significant amount of business in this
5 state and technological advances are occurring in the provision of money transmission services,
6 which have expanded money transmission to include the use of mobile applications, alternative
7 point of sale systems, and other consumer payment systems; (b) persons who use money
8 transmission businesses in this state use those businesses for, among other purposes, paying for the
9 necessities of life and transmitting money to family members; (c) the failure of money transmission
10 businesses to fulfill their obligations would cause loss to consumers, disrupt the payments
11 mechanism in this state, undermine public confidence in financial institutions doing business in this
12 state, and adversely affect the health, safety, and general welfare of persons in this state; and (d) to
13 protect the interests of consumers of money transmission businesses in this state, to maintain public
14 confidence in financial institutions doing business in this state, and to preserve the health, safety,
15 and general welfare of the people of this state, it is necessary to regulate money transmission
16 businesses in this state. Accordingly, the Legislature intended that the provisions of the Money
17 Transmission Act would protect the interests of persons in this state who use money transmission
18 services, provide for the safe and sound conduct of the business of licensees, and maintain public
19 confidence in licensees. See California Financial Code §§ 2001, 2002.

20 53. California Financial Code § 2030(a) states: "A person shall not engage in the
21 business of money transmission in this state, or advertise, solicit, or hold itself out as providing
22 money transmission in this state, unless the person is licensed or exempt from licensure under this
23 division or is an agent of a person licensed or exempt from licensure under this division." §2003(q)
24 defines "money transmission" as "receiving money for transmission," which subsection (u), in turn,
25 defines as "receiving money or monetary value in the United States for transmission within or
26 outside the United States by electronic or other means."

27 54. California Financial Code § 2052(b) provides that, "A person that knowingly
28

1 engages in an activity for which a license is required under this division without being licensed or
2 exempt from licensure under this division is guilty of a felony.”

3 55. California maintains a publicly available directory of licensed money transmitters
4 (http://www.dbo.ca.gov/Licensees/money_transmitters/money_transmitters_directory.asp). None
5 of the iCanPay entities appears on this list. Moreover, none of the iCanPay entities qualifies for an
6 exemption from licensure under the California Money Transmission Act.

7 **FORUM SELECTION CLAUSE**

8 56. Enforcement of the Forum Selection Clause would be unreasonable and unjust in this
9 case for a number of reasons. Defendants are engaged in a fraudulent scheme to steal merchant
10 funds, and have structured the Processing Agreement and corporate operations in a manner designed
11 to avoid liability to Helexo for their conduct. Defendants conduct ICANPAY’s operations through
12 a network of undisclosed companies, including ICANPAY’s California-based subsidiaries, CC CA
13 and ICP CA, and ICANPAY’s UK-based subsidiaries, CCL UK and ICP UK, and merely designate
14 ICANPAY as the contracting party as a basis for advancing the Hong Kong Forum Selection Clause
15 in order to make recourse to the courts cost-prohibitive and inaccessible to their merchant victims
16 based in Europe and North America.

17 57. Again, the evidence demonstrates that, despite using the ICANPAY entity to contract
18 Helexo, iCanPay used Shimogori’s own HSBC account, which he operated from Sacramento,
19 California to provide iCanPay’s essential obligations due to Helexo under the Processing Agreement
20 in connection with the ICANPAY Service.

21 58. California Civil Code § 3513 provides that, “Any one may waive the advantage of a
22 law intended solely for his benefit. But a law established for a public reason cannot be contravened
23 by a private agreement.” As California Financial Code §§ 2001 and 2002 make clear, the California
24 Legislature enacted the Money Transmission Act for the public reason of protecting the public
25 against the failure of money transmission businesses to fulfill their obligations and the associated
26 risk of loss to consumers, disruption of the payments mechanism in this state, diminution of public
27 confidence in financial institutions doing business in this state, and risk of injury to the health, safety,

1 and general welfare of persons in this state. Accordingly, Helexo in this case cannot be deemed to
2 have waived the protections of the California Money Transmission Act, and the Court should refuse
3 to enforce the Forum Selection Clause in this case on the grounds that it would violate a strong
4 California public policy to protect the public from the risks associated with unlicensed money
5 transmission, especially here where it appears that ICANPAY's conduct also violates federal AML
6 laws.

7 59. The evidence also demonstrates that ICANPAY committed fraud in the execution
8 with respect to the Forum Selection Clause. As demonstrated by iCanPay's own marketing materials
9 and emails to Helexo, ICANPAY promotes itself as providing a fully legal, legitimate, sustainable
10 and transparent solution to legal marijuana merchants doing business in the Cannabis Industry. Yet
11 the manner in which ICANPAY structured the distribution of funds related to Plaintiff's credit card
12 processing activity directly violates California law regarding money transmission activities
13 conducted by unlicensed Money Services Businesses, and U.S. federal laws against factoring, credit
14 card laundering and money laundering.

15 60. Thus, in fact, ICANPAY's designation of Hong Kong choice of law and forum
16 appears calculated to avoid accountability for conduct prohibited under California and U.S. law and
17 avoid detection of the unlawful nature of the ICANPAY Service. For these reasons, application of
18 the Hong Kong choice of law and forum selection provisions would deprive Helexo of the benefits
19 and protections of the law regarding these matters rather than ensuring the so-called legality of the
20 solution, and ICANPAY's representations to Helexo that the designation of Hong Kong, China
21 choice of law and forum was for their benefit and protection were knowingly false when made, and
22 designed to conceal the true nature and purpose of the Forum Selection Clause.

23 61. Enforcement of the Forum Selection Clause would also be unreasonable in this case
24 because the Hong Kong Courts do not have personal jurisdiction over Shimogori, who is a critical
25 defendant to this case. The lack of jurisdiction over Shimogori mean that it is unlikely that a Hong
26 Kong Court would be able to accomplish substantial justice in this case. Moreover, the
27 circumstances in this case suggest that Shimogori designated ICANPAY as the contracting party

1 and Hong Kong as the exclusive forum in order to thwart Helexo's ability to litigate – even though
2 Shimogori was performing iCanPay's essential obligations due to Helexo under the iCanPay
3 Merchant Agreement in connection with the iCanPay Service by collecting and distributing the
4 proceeds of Helexo's processing activity from here in California. For these reasons, enforcement of
5 the Forum Selection Clause would be unreasonable here. *See, e.g. Cal-State Business Products &*
6 *Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1671, 1673.

7 62. In California, whether a forum selection clause applies to tort claims depends on
8 whether resolution of the claims relates to interpretation of the contract. *Bancomer, S.A. v. Superior*
9 *Court* (1996) 44 Cal.App.4th 1450, 1461. Here, Helexo alleges that Defendants fraudulently
10 induced it to enter into the Processing Agreement. This offending conduct preceded formation of
11 the Processing Agreement. Shimogori is not a party to the Processing Agreement and converted
12 Helexo's funds without any contractual right to access such funds in the first place. Moreover, the
13 amount of Helexo's funds converted by Defendants is clearly stated in merchant account records,
14 has been acknowledged in writing by Shimogori, and does not require consideration of the parties'
15 performance under the Processing Agreement. Rather, it only requires payment from his own bank
16 account, as previously indicated, which account is operated from Sacramento, California.

17 63. Finally, the Processing Agreement should be deemed void as against public policy.
18 In California, a contract is unenforceable on public policy grounds if "legislation provides that it is
19 unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a
20 public policy against the enforcement of such terms." *Bovard v. American Horse Enterprises, Inc.*
21 (1988) 201 Cal.App.3d 832, 840. There is no requirement that a contract violate an express mandate
22 of a statute before it may be declared void as contrary to public policy. *Altschul v. Sable* (1978) 83
23 Cal.App.3d 153, 162. Here, ICANPAY structured the iCanPay Merchant Agreement to conceal and
24 facilitate Shimogori's unlawful conduct as an unlicensed money transmitter.

25 64. And, notwithstanding ICANPAY's express representations to Helexo regarding the
26 legality of the ICANPAY Service, Kotaro's own admissions make it clear that he and his companies
27 were illegally aggregating, laundering and/or factoring Helexo's credit card transactions in violation

1 of the Federal Trade Commission Act, and a host of Federal laws, including 18 U.S.C. § 1029
2 (factoring), 18 U.S.C. § 371 or § 1029(b)(2) (conspiracy), 18 U.S.C. § 1343 (wire fraud), or 18
3 U.S.C. § 1344 (bank fraud). Thus, Shimogori tricked Helexo into entering the iCanPay Merchant
4 Agreement in furtherance of iCanPay's own illegal activities. As a result, this Court should deem
5 the iCanPay Merchant Agreement void as against public policy.

6 65. Given the foregoing, Helexo is informed and believes and based thereon alleges that
7 Defendants are involved in an ongoing conspiracy to defraud California businesses and other
8 merchant customers by falsely representing the legitimacy and reliability of the ICANPAY Service
9 and ICANPAY's ability to board merchants engaged in high risk verticals in a fully legal, legitimate
10 and transparent manner with the knowledge and approval of the acquiring bank in order to trick such
11 merchants into executing the Processing Agreement to open merchant accounts and begin
12 processing. Rather than paying such merchants the legitimate proceeds of their processing activity,
13 however, Shimogori invents baseless excuses.

14 66. Shimogori does this with comfort knowing that the Forum Selection Clause
15 contained in the Processing Agreement, combined with the complicated web of companies involved
16 in the scheme, the amounts at issue, and the nature of the underlying processing activity (i.e.
17 merchants operating in high risk verticals occupying grey areas of the law) will effectively dissuade
18 the vast majority of merchant businesses from initiating suit to recover their stolen funds by making
19 the prospects of a lawsuit extremely unattractive and cost-prohibitive, and shielding these
20 defendants from the Court jurisdiction and thereby insulating them from liability. Each of these
21 factors is a key part of the ICANPAY scheme.

22 67. Indeed, recognizing this pattern of fraud, Judge David Brown who presided over the
23 motion challenging the forum and examining the same agreement in the *Life-FX Products LLC vs.*
24 *Comcopious Limited, et al.*, Case No. 34-2018-00242853-CU-CO-GDS, ruled as follows: "Court
25 ultimately conclude(d) that Plaintiffs have met the heavy burden of establishing that enforcement of
26 the contractual clause would be unreasonable and would result in substantial injustice to the
27 Plaintiffs." (emph. in original).

1 **THE SETTLEMENT AGREEMENT BETWEEN HELEXO AND PDNL**

2 68. After consistent failure to pay over the owed balance due Helexo, PDNL and Helexo
3 came to an agreement concerning a repayment schedule. Thus, on September 8, 2021, Helexo and
4 PDNL executed an agreement entitled "Memorandum of Understanding." (hereinafter "MoU").
5 Attached as Exhibit H is a true and correct copy of the MoU. Pursuant to the MoU, PDNL
6 acknowledged that it is indebted to Helexo in the amount of \$1,361,738.00 US Dollars. PDNL
7 agreed to pay back Helexo the \$1,361,738.00 US Dollars in five installments, with the first
8 installment of \$272,347.60 due on or before September 17, 2021, and the last installment due on or
9 before October 15, 2021.

10 69. Having received no payments from PDNL, on September 30, 2021, counsel for
11 Helexo sent an email to counsel for Kotaro Shimogori and his company PDNL, reminding him of
12 PDNL's obligation to pay back the \$1,361,738.00 per the installment payment schedule outlined in
13 the MoU.

14 70. Despite this correspondence, PDNL failed to make any payments to Helexo in
15 violation of the MoU. On March 21, 2022, counsel for Helexo emailed counsel for PDNL one final
16 time as a professional courtesy, with an offer to informally resolve the dispute in lieu of filing a
17 lawsuit, as long as a revised payment schedule was proposed and completed within 5 days. PDNL's
18 failure to respond to this correspondence has necessitated the filing of this lawsuit.

19 **FIRST CAUSE OF ACTION**

20 **FRAUD**

21 (By Helexo Against all Defendants)

22 71. Helexo hereby restates and incorporates the allegations contained in each of the
23 foregoing Paragraphs of this Complaint as though set forth in full.

24 72. Shimogori on behalf of himself and the Defendant Entities represented to Helexo that
25 the ICANPAY Service is a fully legal, legitimate, reliable and transparent credit card processing
26 solution which complies with Card Brand Rules and applicable law. Shimogori and ICANPAY
27 made these representations to Helexo via the ICANPAY Website, the ICANPAY application

1 materials, the Processing Agreement, oral statements and emails and other written statements of
2 ICANPAY representatives and sales agents.

3 73. These representations were false, and Shimogori knew these representations were
4 false when made, or made such representations recklessly and without regard for the truth because,
5 at all relevant times, ICANPAY's business practices failed to comply with Card Brand Rules and
6 applicable law, specifically including California law and U.S. Federal law, in numerous material
7 respects.

8 74. These representations were false, and Shimogori and ICANPAY knew them to be
9 false when made. Defendants entered into the underlying merchant relationship with the intention
10 to defraud the merchant, invented false excuses for not paying the merchant, and wrongfully
11 converted the merchant funds for Defendants' own use and benefit rather than paying such amounts
12 to the merchant, notwithstanding their status as the rightful owners of such funds. Likewise,
13 Defendants created its international web of companies in order to confuse merchants and evade
14 accountability in furtherance of its fraudulent scheme.

15 75. Shimogori and ICANPAY intended that Helexo would rely on these representations
16 regarding the legality, legitimacy, reliability and transparency of the iCanPay Service in deciding to
17 do business with ICANPAY and enter the Processing Agreement. Shimogori and other ICANPAY
18 representatives intended to deceive Helexo regarding these matters and induce Helexo's reliance on
19 these representations in order to trick Helexo into signing the Processing Agreement, opening a
20 merchant account, and processing transactions through the ICANPAY Service so that ICANPAY
21 could gain control over Helexo's funds.

22 76. Helexo reasonably relied on Shimogori's representations regarding the reliability,
23 legitimacy, transparency and lawfulness of the ICANPAY Service, and ICANPAY's proven track
24 record of paying its merchants, in deciding to do business with ICANPAY and enter the Processing
25 Agreement.

26 77. Helexo was harmed, and Helexo's reliance on Shimogori's representations regarding
27 the legality, legitimacy, reliability and transparency of the ICANPAY Service was a substantial

1 factor in that harm because Helexo would never have done business with ICANPAY, and allowed
2 ICANPAY to gain control of Helexo's funds, if Helexo had known that ICANPAY was operating
3 in plain violation of Card Brand Rules and applicable law, including California law and U.S. Federal
4 law, and allowing undisclosed third parties to control Helexo's funds without any protections in
5 place.

6 78. Helexo suffered no less than \$1,361,738.00 in direct damages as a direct and
7 proximate result of Defendants' fraud.

8 79. Defendants' wrongful acts as described herein were intentional, malicious,
9 oppressive and fraudulent, and were committed with reckless disregard of harm to Helexo, in willful
10 and conscious disregard of Helexo's rights, such that Helexo is entitled to recover punitive and
11 exemplary damages against Defendants in an amount that is sufficient and appropriate to punish
12 Defendants, as well as to deter them from committing similar acts in the future.

13 **SECOND CAUSE OF ACTION**

14 **CONVERSION**

15 (By Helexo Against All Defendants)

16 80. Helexo hereby restates and incorporates the allegations contained in each of the
17 foregoing Paragraphs of this Complaint as though set forth in full

18 81. Defendants, both directly and through Doe Defendants, have intentionally and
19 substantially interfered with Helexo's ownership rights in no less than \$1,361,738.00 in funds
20 which Shimogori acknowledged is owed to Helexo in the MoU.

21 82. All Defendants have intentionally and substantially interfered with Helexo's right to
22 possession of these funds in the amount of no less than \$1,361,738.00, without Helexo's consent,
23 by wrongfully acquiring and retaining possession of said funds, and wrongfully refusing to transfer
24 such funds into Helexo's rightful possession.

25 83. Helexo made repeated demands for payment of those funds from iCanPay, all of
26 which rightfully belong to Helexo. However, Defendants ignored those demands and wrongfully
27 refused to pay those funds to Helexo.

1 84. Defendants' conduct in wrongfully concealing, diverting and withholding such
2 amounts is part of an unlawful scheme designed by Defendants to defraud unsuspecting merchants
3 like Helexo, and Helexo has been damaged in the amount of no less than \$1,361,738.00 by such
4 conduct as shall be revealed by discovery in this action.

5 85. As a proximate result of said conduct, Helexo has suffered and continue to suffer
6 damages in an amount to be proven at trial.

7 86. Defendants' wrongful acts as described herein were intentional, malicious,
8 oppressive and fraudulent, and were committed with reckless disregard of harm to Helexo, in willful
9 and conscious disregard of Helexo's rights, such that Helexo is entitled to recover punitive and
10 exemplary damages against Defendants in an amount that is sufficient and appropriate to punish
11 Defendants, as well as to deter them from committing similar acts in the future.

12 **THIRD CAUSE OF ACTION**

13 **MONEY HAD AND RECEIVED**

14 (By Helexo Against all Defendants)

15 87. Helexo hereby restates and incorporates the allegations contained in each of the
16 foregoing Paragraphs of this Complaint as though set forth in full.

17 88. Defendants received no less than \$1,361,738.00 in funds due and owing to Helexo
18 as a result of Helexo's processing activity through the ICANPAY Service.

19 89. While no less than \$1,361,738.00 was paid to Defendants for the benefit of Helexo,
20 Defendants have wrongfully concealed and refused to pay these amounts to Helexo.

21 90. As a result, Helexo is entitled to a return of no less than \$1,361,738.00, plus any
22 additional amounts that discovery reveals Defendants have wrongfully retained and withheld from
23 Helexo.

24 **FOURTH CAUSE OF ACTION**

25 **VIOLATION OF PENAL CODE § 496**

26 (By Helexo Against all Defendants)

27 91. Helexo hereby restates and incorporates the allegations contained in each of the

1 foregoing Paragraphs of this Complaint as though set forth in full.

2 92. As set forth above, at least \$1,361,738.00 was stolen from Helexo.

3 93. Defendants received, concealed or withheld the stolen property or aided in receiving,
4 concealing or withholding the stolen property from Helexo with knowledge of their actions.

5 94. As a result of the foregoing, Helexo has been damaged and is entitled to recover three
6 times the amount of their actual damages in addition to reasonable attorneys' fees.

7 **FIFTH CAUSE OF ACTION**

8 **BREACH OF CONTRACT**

9 (By Helexo Against all Defendants)

10 95. Helexo hereby restates and incorporates the allegations contained in each of the
11 foregoing Paragraphs of this Complaint as though set forth in full.

12 96. On or about April 22, 2020, Helexo entered into the Processing Agreement. A true
13 and correct copy of the Processing Agreement is attached hereto as Exhibit F.

14 97. Between 2020 and 2021, Helexo processed millions of dollars in sale through the
15 ICANPAY Service.

16 98. ICANPAY breached its obligations to Helexo by failing to pay no less than
17 \$1,361,738.00 due and owing to Helexo, pursuant to the terms of the iCanPay Merchant Agreement.

18 99. Helexo has performed all obligations owed to ICANPAY in connection with the
19 Processing Agreement, except for such obligations that Helexo has been excused or prevented from
20 performing by virtue of Defendants' conduct.

21 100. As a direct and proximate result of ICANPAY's breaches of the Processing
22 Agreement, Helexo has suffered damages of no less than \$1,361,738.00 which reflects the net sales
23 proceeds of Helexo's processing activity to which Helexo is clearly entitled. Helexo has therefore
24 been damaged in an amount to be proved at time of trial but in no event less than \$1,361,738.00 all
25 of which is readily and clearly ascertainable.

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1 **SIXTH CAUSE OF ACTION**

2 **BREACH OF CONTRACT**

3 (By Plaintiff Against Pan Digital)

4 101. Helexo hereby restates and incorporates the allegations contained in each of the
5 foregoing Paragraphs of this Complaint as though set forth in full.

6 102. On or about September 8, 2021, Helexo and PDNL entered into a valid, binding
7 contract (the MoU). A true and correct copy of the MoU is attached hereto as **Exhibit H**.

8 103. Pursuant to the MoU, PDNL agreed to pay back the \$1,361,738.00 US Dollars it
9 owed to Helexo in five equal installments, with the first installment of \$272,347.60 due on or before
10 September 17, 2021, and the last installment due on or before October 15, 2021.

11 104. PDNL breached its obligations to Helexo by failing to pay any of the agreed upon
12 \$1,361,738.00 US Dollars due and owing to Helexo, pursuant to the terms of the MoU.

13 105. Helexo has performed all obligations owed to PDNL in connection with the MoU,
14 except for such obligations that Helexo has been excused or prevented from performing by virtue
15 of PDNL's conduct.

16 106. As a direct and proximate result of PDNL's breaches of the MoU, Helexo has
17 suffered damages of no less than \$1,361,738.00 which reflects the negotiated amount that Helexo
18 and PDNL agreed upon as the amount due and owed to Helexo. Helexo has therefore been damaged
19 in an amount to be proved at time of trial but in no event less than \$1,361,738.00, all of which is
20 readily and clearly ascertainable.

21 **SEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION IN VIOLATION OF CALIFORNIA BUSINESS &**

23 **PROFESSIONS CODE § 17200 *et seq***

24 (By Helexo Against all Defendants)

25 107. Helexo hereby restates and incorporates the allegations contained in each of the
26 foregoing Paragraphs of this Complaint as though set forth in full.

27 108. Helexo brings this claim on behalf of itself and the public.

1 109. Defendants, and each of them, have violated California Business and Professions
2 Code § 17200 by engaging in unfair, unlawful, and fraudulent business acts or practices, including
3 the false and fraudulent scheme to defraud its sales representatives, including Helexo, as described
4 above.

5 110. Defendants' practices are likely to deceive, and have deceived, members of the
6 public, including Helexo. Defendants knew, or should have known, that their misrepresentations,
7 omissions, failure to disclosure and/or partial disclosures, and omission of material facts are likely
8 to deceive a reasonable person.

9 111. Nonetheless, Defendants continued to make such misrepresentations despite the fact
10 they knew or should have known that their conduct was misleading and deceptive. By engaging in
11 the above-described acts and practices, Defendants each committed one or more acts of unfair
12 competition within the meaning of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et
13 seq.

14 112. Defendants' conduct, as alleged herein, also constitutes unlawful business practices.
15 Among other things, Defendants violated the California Money Transmission Act (embodied in
16 California Financial Code §§ 2000 – 2176), California Penal Code §496, federal regulatory statutes,
17 including the Federal Trade Commission Act and the Telemarketing Sales Rule, and engaged in a
18 host of federal crimes, including but not limited to 18 U.S.C. § 1029 (factoring), 18 U.S.C. §
19 1029(b)(2) (conspiracy), 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. §
20 1344 (bank fraud), and 18 U.S.C. §§ 1956 and 1957 (money laundering).

21 113. Helexo suffered injury in fact as a result of Defendants' unfair and unlawful methods
22 of competition, including the submission of customer credit card transactions based on agreed upon
23 terms followed by Defendants' conversion of funds rightfully owed to Helexo. As a proximate
24 result of Defendants' conduct, Helexo suffered a loss of money and/or property.

25 114. Helexo seeks restitution of the monies retained by Defendants in the amount to be
26 proven at trial, but which total no less than \$1,361,738.00

27 115. Helexo also seeks an order of this Court enjoining Defendants from continuing their
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1 deceptive business practices.

2 116. Helexo seeks an order of this Court against Defendants, and each of them, awarding
3 Helexo's restitution under § 17200, et seq., plus interest, and attorneys' fees and costs pursuant to
4 Civil Code § 1021.5.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Helexo prays for:

- 7 1. Damages in an amount to be proven at trial, but which are no less than
8 \$1,361,738.00;
- 9 2. Treble damages in the amount of \$4,085,214;
- 10 3. Disgorgement and injunctive relief;
- 11 4. Punitive damages in an amount to be proven at trial;
- 12 5. Costs of suit;
- 13 6. Pre- and post-judgment interest at the maximum rate allowed by law; and
- 14 7. Such other relief as the Court deems just and proper.

15 Dated: April 18, 2022

16 **ROME & ASSOCIATES, A.P.C.**
Eugene Rome

17
18 By: 
19 **EUGENE ROME**
Attorney for Plaintiff HELEXO PTE
20 LIMITED

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DEMAND FOR JURY TRIAL

Plaintiff Helexo Pte Limited hereby requests a trial by jury on all issues triable by a jury.

Dated: April 18, 2022

ROME & ASSOCIATES, A.P.C.
Eugene Rome

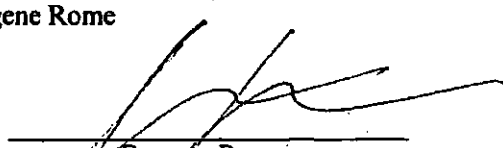
By: 
EUGENE ROME
Attorney for Plaintiff HELEXO PTE
LIMITED

EXHIBIT A

Registered number
10632334

Pan Digital Network Limited

Filleled Accounts

31 December 2020

Pan Digital Network Limited**Registered number: 10632334****Balance Sheet****as at 31 December 2020**

	Notes	31/12/20	29/2/20
		£	£
Current assets			
Debtors	3	-	4
Cash at bank and in hand		516,401	121,464
		<u>516,401</u>	<u>121,468</u>
Creditors: amounts falling due within one year	4	(8,360,473)	(98,354)
Net current (liabilities)/assets		<u>(7,844,072)</u>	<u>23,114</u>
Net (liabilities)/assets		<u>(7,844,072)</u>	<u>23,114</u>
Capital and reserves			
Called up share capital		1,000	1,000
Profit and loss account		(7,845,072)	22,114
Shareholders' funds		<u>(7,844,072)</u>	<u>23,114</u>

The directors are satisfied that the company is entitled to exemption from the requirement to obtain an audit under section 477 of the Companies Act 2006.

The members have not required the company to obtain an audit in accordance with section 476 of the Act.

The directors acknowledge their responsibilities for complying with the requirements of the Companies Act 2006 with respect to accounting records and the preparation of accounts.

The accounts have been prepared and delivered in accordance with the special provisions applicable to companies subject to the small companies regime. The profit and loss account has not been delivered to the Registrar of Companies.

K Shimogori

Director

Approved by the board on 28 September 2021

Pan Digital Network Limited
Notes to the Accounts
for the period from 1 March 2020 to 31 December 2020

1 Accounting policies

Basis of preparation

The accounts have been prepared under the historical cost convention and in accordance with FRS 102, The Financial Reporting Standard applicable in the UK and Republic of Ireland (as applied to small entities by section 1A of the standard).

Turnover

Turnover is measured at the fair value of the consideration received or receivable, net of discounts and value added taxes. Turnover includes revenue earned from the sale of goods and from the rendering of services. Turnover from the sale of goods is recognised when the significant risks and rewards of ownership of the goods have transferred to the buyer. Turnover from the rendering of services is recognised by reference to the stage of completion of the contract. The stage of completion of a contract is measured by comparing the costs incurred for work performed to date to the total estimated contract costs.

Debtors

Short term debtors are measured at transaction price (which is usually the invoice price), less any impairment losses for bad and doubtful debts. Loans and other financial assets are initially recognised at transaction price including any transaction costs and subsequently measured at amortised cost determined using the effective interest method, less any impairment losses for bad and doubtful debts.

Creditors

Short term creditors are measured at transaction price (which is usually the invoice price). Loans and other financial liabilities are initially recognised at transaction price net of any transaction costs and subsequently measured at amortised cost determined using the effective interest method.

Taxation

A current tax liability is recognised for the tax payable on the taxable profit of the current and past periods. A current tax asset is recognised in respect of a tax loss that can be carried back to recover tax paid in a previous period. Deferred tax is recognised in respect of all timing differences between the recognition of income and expenses in the financial statements and their inclusion in tax assessments. Unrelieved tax losses and other deferred tax assets are recognised only to the extent that it is probable that they will be recovered against the reversal of deferred tax liabilities or other future taxable profits. Deferred tax is measured using the tax rates and laws that have been enacted or substantively enacted by the reporting date and that are expected to apply to the reversal of the timing difference, except for revalued land and investment property where the tax rate that applies to the sale of the asset is used. Current and deferred tax assets and liabilities are not discounted.

Provisions

Provisions (ie liabilities of uncertain timing or amount) are recognised when there is an obligation at the reporting date as a result of a past event, it is probable that economic benefit will be transferred to settle the obligation and the amount of the obligation can be estimated reliably.

Foreign currency translation

Transactions in foreign currencies are initially recognised at the rate of exchange ruling at the date of the transaction. At the end of each reporting period foreign currency monetary items are translated at the closing rate of exchange. Non-monetary items that are measured at historical cost are translated at the rate ruling at the date of the transaction. All differences are charged to profit or loss.

2 Employees	31/12/20	29/2/20
	Number	Number
Average number of persons employed by the company	<u>2</u>	<u>2</u>
3 Debtors	31/12/20	29/2/20
	£	£
Due from group undertakings	<u>-</u>	<u>4</u>
4 Creditors: amounts falling due within one year	31/12/20	29/2/20
	£	£
Directors loan - K Shimogori	86,273	-
Due to group undertakings	8,258,009	-
Taxation and social security costs	5,399	5,399
Other creditors	<u>10,792</u>	<u>92,955</u>
	<u>8,360,473</u>	<u>98,354</u>

5 Other information

Pan Digital Network Limited is a private company limited by shares and incorporated in England. Its registered office is:
Belmont Cottage Holymoore Road
Holymoorside
Chesterfield
S42 7DS

This document was delivered using electronic communications and authenticated in accordance with the registrar's rules relating to electronic form, authentication and manner of delivery under section 1072 of the Companies Act 2006.

EXHIBIT B

4016150

	Secretary of State Articles of Incorporation of a General Stock Corporation	ARTS-GS
	IMPORTANT — Read Instructions before completing this form. Filing Fee — \$100.00 Copy Fees — First page \$1.00; each attachment page \$0.50; Certification Fee — \$5.00 Note: Corporations may have to pay minimum \$800 tax to the California Franchise Tax Board each year. For more information, go to https://www.ftb.ca.gov.	

FILED
 Secretary of State
 State of California

APR 25 2017

1 PC This Space For Office Use Only

1. Corporate Name (Go to www.sos.ca.gov/business/be/name-availability for general corporate name requirements and restrictions.)

The name of the corporation is COMCOPIOUS CALIFORNIA INC

2. Business Addresses (Enter the complete business addresses.)

a. Initial Street Address of Corporation - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
980 9TH STREET	SACRAMENTO	CA	95814
b. Initial Mailing Address of Corporation, if different than item 2a	City (no abbreviations)	State	Zip Code

3. Service of Process (Must provide either individual OR Corporation.)

INDIVIDUAL — Complete items 3a and 3b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
KOTARO		SHIMOGORI	
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box	City (no abbreviations)	State	Zip Code
5150 FAIR OAKS BLVD	CARMICHAEL	CA	95608

CORPORATION — Complete item 3c. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete item 3a or 3b

4. Shares (Enter the number of shares the corporation is authorized to issue. Do not leave blank or enter zero (0).)

This corporation is authorized to issue only one class of shares of stock.

The total number of shares which this corporation is authorized to issue is 10,000.

5. Purpose Statement (Do not alter the Purpose Statement.)

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

6. Read and Sign Below (This form must be signed by each incorporator. See instructions for signature requirements.)

Signature

KOTARO SHIMOGORI

Type or Print Name.

EXHIBIT C

Companies House

BETA This is a trial service — your [feedback \(https://www.research.net/r/chbeta\)](https://www.research.net/r/chbeta) will help us to improve it.

Search for companies or officers

COMCOPIOUS UK LIMITED

Company number **10632334**

- [Officers \(https://beta.companieshouse.gov.uk/company/10632334/officers\)](https://beta.companieshouse.gov.uk/company/10632334/officers)
- [Persons with significant control](#)

1 active person with significant control / 0 active statements

Kotaro Shimogori Active

Correspondence address **Unit 702, 7/F Bangkok Bank Building, 18 Bonham Strand West, Hong Kong**

Notified on **7 August 2017**

Date of birth **January 1960**

Nationality **American**

Nature of control **Has significant influence or control**

Country of residence **United States**

Shah Imraul Kaeesh Ceased

Correspondence address
Unit 702, 7/F Bangkok Bank Building, No. 18 Bonham Strand West, Hong Kong

Notified on **22 February 2017**

Ceased on **31 July 2017**

Date of birth **April 1982**

Nationality **Bangladeshi**

Nature of control **Has significant influence or control**

Country of residence **Bangladesh**

Is there anything wrong with this page?

EXHIBIT D

Companies House

BETA This is a trial service — your [feedback \(https://www.research.net/r/chbeta\)](https://www.research.net/r/chbeta) will help us to improve it.

Search for companies or officers

ICANPAY UK LIMITED

Company number **11148162**

- [Officers \(https://beta.companieshouse.gov.uk/company/11148162/officers\)](https://beta.companieshouse.gov.uk/company/11148162/officers)
- [Persons with significant control](#)

1 active person with significant control / 0 active statements

Kotaro Shimogori Active

Correspondence address

Unit 702, 7/F Bangkok Bank Building, No 18 Bonham Strand West, Hong Kong

Notified on **15 January 2018**

Date of birth **January 1960**

Nationality **American**

Nature of control **Has significant influence or control**

Country of residence **United States**

[Is there anything wrong with this page?](#)

EXHIBIT E



Merchant Accounts Made Easy

At iCanPay, we make it so easy to get a merchant account, you can be up and accepting credit cards in less than 24 hours. We work with all major credit card processors and can help you choose the one that's right for your business. We'll even help you with the paperwork and get you up and online in no time.

High Risk Industries

At iCanPay, we understand that some businesses are considered high risk by credit card processors. That's why we've created a special program for these businesses. We'll help you get a merchant account and get you up and accepting credit cards in less than 24 hours. We'll even help you with the paperwork and get you up and online in no time.

Backed By Visa and Mastercard Acquirers

At iCanPay, we're backed by Visa and Mastercard acquirers. This means we can help you get a merchant account and get you up and accepting credit cards in less than 24 hours. We'll even help you with the paperwork and get you up and online in no time.

EXHIBIT F

DATA, LOGISTICS AND SERVICE PROCESSING AGREEMENT

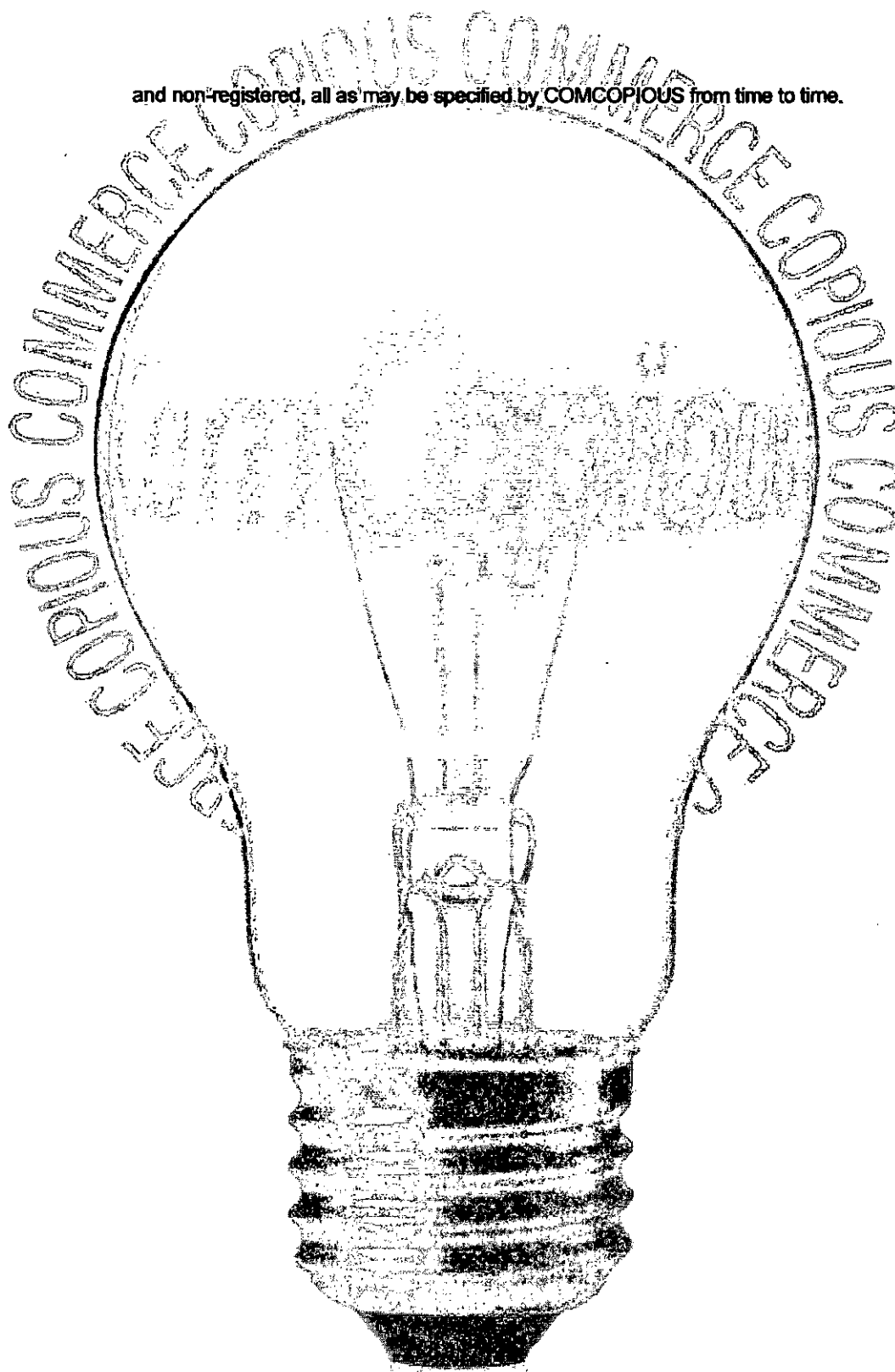
THIS AGREEMENT (the "Agreement") is made on this date: **22 April 2020** by and between **ComCopious, Limited** a company duly incorporated and organized under the laws of Hong Kong, China, having its registered office/principal place of business at 15th Floor, 100 Queen's Road, Central, Hong Kong, China hereinafter referred to as "**COMCOPIOUS**", and **Helexo Pte Limited** a company duly incorporated and organized under the laws of Singapore having its registered principal place of business at 60 Paya Lebar Road, #09-36/39 Paya Lebar Square, Singapore hereinafter referred to as "**PARTNER**".

The parties have agreed the following:

1. DEFINITIONS

- "Agreement": the agreement between COMCOPIOUS and PARTNER for the Data, Logistics and Service Processing Agreement;
- "PARTNER": PARTNER which is a duly incorporated entity desiring to enter into an Agreement with COMCOPIOUS;
- "Conditions": the COMCOPIOUS Data, Logistics and Service Processing Agreement Terms and Condition;
- "Customer": a natural person or legal entity or entities who or which has or have ordered goods and/or services from COMCOPIOUS through PARTNER;
- "COMCOPIOUS": COMCOPIOUS, LIMITED and or any of its World-Wide subsidiaries or group companies of COMCOPIOUS, LIMITED;
- "Cardholder": a natural person or legal entity or entities who or which is/are formally and officially registered with a Financial Institution as the holder of a particular debit card, credit card or bank account, and whose account number is used in an order;
- "Purchase Price": the price payable by the Customer(s) to COMCOPIOUS for the good(s) and/or service(s) ordered by the Customer(s) from PARTNER minus any fees, charges and commission withheld by, or due to, the Financial Institution(s);
- "Delivered or Shipped Good(s) and/or Service(s)": the goods(s) and/or services(s) provided to the Customer(s) by the PARTNER;
- "Invoice": Customer approved payable amount for the good(s) and/or service(s) the PARTNER delivered and/or shipped to the Customer and is payable by COMCOPIOUS to the PARTNER;
- "Financial Institution": the entity that processes the payment instructions received from the Customer by COMCOPIOUS for the payment method selected by the Customer and that, following authorization, effects payment of the Purchase Price;
- "Chargeback": a potential or expected claim or a claim made by a Financial Institution against COMCOPIOUS for repayment of the Purchase Price including any fees, charges and commissions withheld by, or due to, the Financial Institutions, in connection with a denial or cancellation of an order for goods and/or services by a Cardholder or a claim by a Customer that PARTNER has failed to perform its obligations towards the Customer, including in connection with alleged non-conformity or non-timely delivery of the good(s) or service(s);
- "Refund (Credit)": any amount to be returned by COMCOPIOUS to a Customer's account;
- "Confidential Information": all information which prior to or upon its disclosure is designated as such by one party (the Disclosing party's) to the other party (the Receiving party's), or which should reasonably be considered as information of a confidential nature by the Receiving Party;
- "Deposit": if and to the extent agreed upon between COMCOPIOUS and PARTNER, an amount held on the COMCOPIOUS or Financial Institution's bank account securing payment of future Chargeback's by COMCOPIOUS to a Financial Institution after termination of the Agreement;
- "Trademarks": all trademarks and logo's of COMCOPIOUS that exist now or in the future, both registered

and non-registered, all as may be specified by COMCOPIOUS from time to time.



2. PAYMENT OBLIGATIONS OF COMCOPIOUS TO PARTNER

- 2.1 The Invoice shall consist of the total outstanding settled Purchase Price for the account of PARTNER after deduction of the following:
- (a) Refunds (Credit);
 - (b) Chargeback's;
 - (c) any amount in order to meet any Deposit requirements;
 - (d) in addition to (a) and (b) above, any fines, fees, charges or commissions to be paid by PARTNER to Financial Institutions; and
 - (e) any charges or amounts due to COMCOPIOUS under the Agreement other than charges or amounts mentioned in (a) through (e) above.
- COMCOPIOUS is entitled to set-off any indebtedness of PARTNER towards COMCOPIOUS and itself.
- 2.2 Transactions which are not captured by PARTNER (either by active capturing or by automatic capturing) within 14 days after they were authorized by the related Financial Institution will automatically expire and can no longer be captured. Further, COMCOPIOUS has the right to remove the order data of any order that remains unpaid for more than 2 months (i.e. this relates for instance to transactions which are paid with off-line payment methods). COMCOPIOUS will keep all other historic transaction data available for on-line inquiries for at least 6 months after the last status change.

3. PAYMENT OBLIGATIONS OF PARTNER TO COMCOPIOUS

- 3.1 COMCOPIOUS will send PARTNER a monthly service fee for Data, Logistics and Service Processing Agreement fees. The payment must be received by COMCOPIOUS within 30 (thirty) days from the date of such advice. The currency will be either in Euro, Pound Sterling, or US Dollar.
- 3.2 PARTNER authorizes COMCOPIOUS to set-off advice with the Invoice in case COMCOPIOUS intends to use set-off.
- 3.3 COMCOPIOUS is entitled to alter the prices of the COMCOPIOUS Data, Logistics and Service Processing Agreement taking into account a reasonable notice period. If the prices are amended PARTNER is entitled to terminate the Agreement per the effective date of the amendment by sending COMCOPIOUS a written notice within fourteen days after receipt of the amendment notice.
- 3.4 PARTNER has no right to set-off, or to withhold payments to COMCOPIOUS, in connection with any amounts due to PARTNER by COMCOPIOUS.
- 3.5 PARTNER is responsible for all Chargeback's independent of the information provided by the Risk Management Module. Where the Financial Institutions allow a Chargeback to be disproved, PARTNER will bear the responsibility of providing any evidence required by the Financial Institution.

4. PARTNER GUARANTEE AND INDEMNITY

- 4.1 PARTNER guarantees to COMCOPIOUS that, while using the COMCOPIOUS Data, Logistics Payment Processing Services:
- 4.1.1 it provides and will provide such information to the Customer on its website and in other commercial communications to the Customer as is required pursuant to the laws of the Region and of those Region in which it offers its goods and/or services;
 - 4.1.2 it respects and will respect the intellectual property rights of third parties and does not and will not infringe such rights in any way;
 - 4.1.3 it does not and will not sell any good(s) or service(s) the sale of which is prohibited under the laws of the Region in which it offers its good(s) and/or service(s);
 - 4.1.4 it will comply with personal data protection laws of the Region and of those Region in which it offers its good(s) and/or service(s) and that it shall implement appropriate technical and organizational measures to protect personal data;
 - 4.1.5 it will perform its obligations towards the Customer, including but not limited to accepting responsibility for the acceptance of a Customer order, its fulfillment in an agreed upon manner, and all material warranties and guarantees or order commitments.
- 4.2 PARTNER will indemnify COMCOPIOUS and hold COMCOPIOUS harmless for any and all costs (including legal fees) and damages incurred by COMCOPIOUS as a result of a claim by a Customer or any other third party which is made against COMCOPIOUS in connection with a breach by PARTNER of the guarantees contained in clause 4.1.
- 4.3 Since the COMCOPIOUS Data, Logistics and Service Processing Agreement is kept up to date with going market requirements, from time to time COMCOPIOUS may adjust the content and interfaces of the COMCOPIOUS Data, Logistics and Service Processing Agreement. If such adjustments lead to a necessary change in software interfaces or operating procedures at PARTNER, COMCOPIOUS will notify PARTNER as soon as possible prior to the execution of such adjustments, the costs that are attached to making these changes are borne by PARTNER.

COMCOPIOUS will keep existing interfaces or products available for at least one year after signing this Agreement, except for those circumstances where this may not reasonably be expected (including but not limited to changes in interfaces or products imposed on COMCOPIOUS by Financial Institutions or changes in the regulatory environment).

5. PRIVACY

- 5.1 COMCOPIOUS is the controller of all personal data which are given to COMCOPIOUS by PARTNER and/or the Customer. COMCOPIOUS is the data processor of such data.
- 5.2 COMCOPIOUS will keep the personal data (including credit card details) given to it by PARTNER and/or the Customer for as long as required in order to perform its obligations under the Agreement. The period in which Customer data will be stored will as a minimum equal the period granted to Customers by the Financial Institutions for the making of Chargeback's.
- 5.3 PARTNER will clearly and unambiguously inform its Customers that when they place an order for the good(s) and/or service(s), personal data provided by the Customer will be provided to COMCOPIOUS, acting as data processor of such data on behalf of PARTNER. PARTNER will clearly and unambiguously state that such data are only processed by COMCOPIOUS in order to process the payment instruction of the Customer and that the personal data of the Customer will not be provided to third parties other than the Financial Institutions for the chosen payment method.
- 5.4 COMCOPIOUS makes use of multiple Financial Institutions for the processing of payment transactions. Not all such Financial Institutions have flexibility within their systems to specify which information appears on the Customer's financial statement. Accordingly, in the case that PARTNER makes use of COMCOPIOUS connection numbers with the Financial Institutions and/or the bank account of COMCOPIOUS, PARTNER must clearly inform the Customer that COMCOPIOUS, whether or not in combination with the PARTNER name or the PARTNER URL, may appear on the Customer's bank statement or credit card statement.
- 5.5 COMCOPIOUS accepts no responsibility for the privacy policies of PARTNER and for the processing of personal Customer data by PARTNER.
- 5.6 Unless it is required to do so by law, COMCOPIOUS will not provide any personal Customer data to third parties other than to Financial Institutions to the extent such is required in order to process the payment instructions from the Customer.

6. SERVICE LEVEL AND SECURITY

- 6.1 COMCOPIOUS guarantees an average up time of 99% per month of the COMCOPIOUS Data, Logistics and Service Processing Agreement on the condition of full availability of the services of its Internet and telecom providers.
- 6.2 COMCOPIOUS does not guarantee any minimum response times in connection with on-line authorization of payment from a Financial Institution or availability of specific payment methods.
- 6.3 The COMCOPIOUS Data, Logistics and Service Processing Agreement servers are located in a secure environment, protected by an alarm installation, and is monitored 7 days a week, 24 hours per day.
- 6.4 Access to the COMCOPIOUS Data, Logistics and Service Processing Agreement servers and to the data thereon is permitted to authorized personnel of COMCOPIOUS only. The data on the COMCOPIOUS Data, Logistics and Service Processing Agreement servers are protected by a firewall. The COMCOPIOUS Data, Logistics and Service Processing Agreement supports robust encryption technologies.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 COMCOPIOUS hereby grants PARTNER a royalty-free and non-exclusive right for the term of this Agreement to use the Trademarks on its website(s) and in any off-line promotional materials solely in order to indicate that it makes use of the COMCOPIOUS Data, Logistics and Service Processing Agreement. PARTNER shall use such Trademarks in accordance with COMCOPIOUS's directions for the use of such Trademarks. PARTNER does not have a right of sub-license. COMCOPIOUS may apply limitations to the right granted to PARTNER under this paragraph at its sole discretion.
- 7.2 PARTNER hereby grants COMCOPIOUS a royalty-free and non-exclusive right for the term of this Agreement to use its trademark and logo's on their websites and in off-line publications for promotional purposes.
- 7.3 When using the Trademarks PARTNER and COMCOPIOUS will ensure that no composite marks are created with its own trademarks and/or logo's. PARTNER and COMCOPIOUS acknowledge that their use of the Trademarks does not create for itself any rights in the Trademarks other than those explicitly granted in this Agreement.
- 7.4 All proprietary rights in the equipment, software (such as interfaces) and other materials used by COMCOPIOUS in the performance of this Agreement, whether or not supplied to PARTNER, shall remain with COMCOPIOUS or their licensor. PARTNER shall exclusively acquire such right of use as is explicitly granted hereunder or otherwise.

- 7.5 Upon termination of this Agreement, PARTNER will immediately withdraw any reference to COMCOPIOUS from its website(s) and will cease the use of the Trademarks.
- 7.6 PARTNER is hereby granted rights to use VISA and MasterCard logo's on their premises and website according to Card Association guidelines available online.

8. CONFIDENTIALITY

- 8.1 During the term of this Agreement and after termination or expiration of this Agreement for any reason whatsoever, the Receiving Party shall:
- (a) not disclose Confidential Information to any person other than with the prior written consent of the other party or in accordance with clauses 8.2 and 8.4; and
 - (b) not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 8.2 During the term of this Agreement, the Receiving Party may disclose the Confidential Information to its employees and/or to Financial Institutions and/or to other third parties (the "Recipient") to the extent reasonably necessary for the purposes of this Agreement.
- 8.3 The Receiving Party shall procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a party to this Agreement.
- 8.4 The obligations contained in clause 8.1 to 8.3 shall not apply to any Confidential Information which:
- (a) is in the public domain at the date of this Agreement, or at any time after the date of this Agreement comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
 - (b) is known by the Receiving Party prior to disclosure by the Disclosing Party to the Receiving Party;
 - (c) subsequently comes lawfully into the possession of the Receiving Party from a third party; or
 - (d) is disclosed by the Receiving Party pursuant to and in accordance with a relevant statutory obligation, an order of a court of competent jurisdiction or an order of a competent regulatory body.

9. DURATION AND TERMINATION

- 9.1 The first three month period of the Agreement is a trial period. Within this period, either party can terminate the Agreement upon immediate notice.
- 9.2 Without prejudice to clause 9.1, the Agreement is entered into for a period of one year and shall, unless terminated in writing by either party at least one month prior to the expiry of the one year term, continue in force for subsequent one year periods.
- 9.3 COMCOPIOUS and PARTNER have the right to terminate this Agreement with immediate effect, if one of the parties:
- (a) materially breaches the Agreement and such breach are not remedied within 30 days after having been given notice of such breach;
 - (b) is declared bankrupt or is granted a suspension of payment
- 9.4 COMCOPIOUS has the right to terminate this Agreement with immediate effect, if PARTNER:
- (a) becomes involved in the sale of good(s) and/or service(s) the sale of which is unlawful in the Region in which the good(s) and/or service(s) are offered;
 - (b) is subject to a monthly Chargeback rate that is higher than 1% of the total aggregate Purchase Price that has been processed by COMCOPIOUS for the account of PARTNER over a period of one month;
 - (c) is no longer accepted by Acquiring bank.
- 9.5 COMCOPIOUS has the right to terminate the Agreement with a one month notice term prior to termination if the COMCOPIOUS costs of the project will turn out to be subsequently higher than the earnings of the project.

10. LIMITATION OF LIABILITY

- 10.1 The liability of COMCOPIOUS under the Agreement is limited to an amount equal to the total sum of the monthly subscription fees and transaction fees paid by PARTNER to COMCOPIOUS over the period that the Agreement has been in force, with a maximum of 6 months.
- 10.2 Under no circumstances will COMCOPIOUS be liable for any failure of a Financial Institution to effect payment of the Purchase Price.
- 10.3 Neither party shall be liable to the other party for incidental, consequential or punitive damages incurred by that Party as a result of a breach of this Agreement.

11. GENERAL

- 11.1 Entire Agreement: this Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all such previous agreements.

- 11.2 Amendment and waiver: no variation of this Agreement shall be valid unless it is in writing (including per e-mail). The failure to exercise or any delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 11.3 Assignment: PARTNER shall not assign or transfer or purport to assign or transfer any of its rights or obligations under this Agreement, except that it may assign all or any of its rights under this Agreement with the prior written consent of COMCOPIOUS (such consent not to be unreasonably withheld or delayed).
- 11.4 Severability: If any provision of this Agreement shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of all other provisions of this Agreement shall not be affected thereby.
- 11.5 Survival: the provisions of clause 7 of these Conditions shall survive the termination of this Agreement for whatever reason, and, in addition, the obligations of the parties under this Agreement that by their nature continue beyond the expiration of this Agreement shall survive any termination or cancellation of the Agreement.

12. GOVERNING LAW AND JURISDICTION

- 12.1 These terms and Conditions and/or the Agreement are governed by, and shall be construed in accordance with the laws of Hong Kong, and all disputes arising out of or connected with these Terms and Conditions and/or the Agreement shall be subject to the exclusive jurisdiction of the competent court of Hong Kong, judging in first instance; and its appellate courts, subject to appeal at Hong Kong's High Court of Justice.

13. PROCESSING RULES

- 13.1 Credits are only allowed in emergency situations. Please notify COMCOPIOUS of any credits you need to issue.
- 13.2 PARTNER must send customer email and IP address with each Transaction along with other information as instructed by COMCOPIOUS from time to time.
- 13.3 Do not display the descriptor in any public area on the website - this must only be displayed on a purchase confirmation page. (Typically after the customer has successfully purchased a good(s) and/or service(s) offered by PARTNER). Please send a copy of the purchase confirmation page that displays the descriptor. Descriptor must also be displayed in a purchase confirmation email to the consumer.
- 13.4 PARTNER shall provide a list of all websites that the account will be used for.
- 13.5 PARTNER shall provide the customer service name and phone number and email we can provide to the Financial Institutions customer service department. Since the descriptor ties into this department, occasionally one of your customers may phone our department. Having your info on file will allow for quick resolution of any issues.
- 13.6 In case PARTNER exceeds any of the chargeback ratios defined below, the COMCOPIOUS may, at its sole discretion, declare PARTNER in breach of the chargeback thresholds and terminate PARTNER's processing account with immediate effect;
- If PARTNER exceeds a chargeback ratio of 1.00 % at the end of any given month,
 - If, over the course of any given month and at any given day, the PARTNER exceeds a
 - chargeback ratio of 2.00%
- In this context, the notion of chargeback ratio refers to the chargeback ratios in numbers (chargeback count) and volumes;
- (1) the ratio of the number of chargeback transactions to the total number of sales transactions, as well as (2) the ratio of chargeback dollar volume to total interchange sales volume. A breach of the chargeback thresholds is given as soon as any the chargeback ratios is exceeded: i.e. in numbers or in volume. Independently of each other.

14. SCOPE OF SERVICE

- 14.1 This COMCOPIOUS processing agreement applies only for e-commerce credit card processing services provided by COMCOPIOUS for its Agents and/or PARTNER. PARTNER hereby retains COMCOPIOUS to perform such services. COMCOPIOUS will perform such services substantially in accordance with the defined herein.
- 14.2 Credit card processing is utilized by PARTNER to allow customers to purchase good(s) and service(s) from COMCOPIOUS. Transactions will be consummated by transferring funds between the customer's credit card to a settlement account established by COMCOPIOUS for PARTNER (the "settlement account"). Credit card processing is available on a 365x24 basis and can be accessed on-line via the Internet. PARTNER specifically acknowledges that

- COMCOPIOUS is neither a bank nor a depository of liquid funds. As a result, PARTNER specially acknowledges that as a result of COMCOPIOUS not being a bank or depository of liquid funds, COMCOPIOUS is not insured by any government agencies and is not self-insured. COMCOPIOUS is subject only to the laws of its own jurisdiction.
- 14.3 COMCOPIOUS and PARTNER agree to the following definitions for use in this agreement:
- 14.3.1 Card associations are the governing bodies comprised of issuing and acquiring banks that set the rules and procedures for the processing of credit cards.
 - 14.3.2 Chargeback are when a customer disputes a charge on a card claiming that the charge resulted from fraudulent or improper use of the card by PARTNER.
 - 14.3.3 Cardholder refers to the customer who has been given use of the card by the issuing bank.
 - 14.3.4 Card issuer is a bank (also referred to as an issuing bank) which issued the card to the cardholder.
 - 14.3.5 Acquiring bank is the bank which receives the request from Customer to process the transaction.
 - 14.3.6 Cash advance is a request by the customer to receive cash or a cash equivalent payment from the available funds on the card.
 - 14.3.7 "Settlement period" the period for which net revenue is calculated.
- 14.4 PARTNER shall not require any cardholder to pay any part of any charge imposed upon PARTNER by this agreement, whether through any increase in price or otherwise require a customer presenting a card to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, PARTNER may not, by this term, be prevented from offering discounts to customers for cash purchases.
- 14.5 PARTNER will follow the steps provided by COMCOPIOUS, the card issuer or card association for accepting cards.
- 14.6 PARTNER agrees that any of the following shall be grounds for immediate termination of this agreement and COMCOPIOUS may hold funds if agreement is terminated; further PARTNER may be subject to additional punitive measures by card association and card issuers. PARTNER shall:
- 14.6.1 NOT divide a single card transaction between two or more sales drafts on a single card.
 - 14.6.2 NOT deposit duplicate card transactions. PARTNER shall be debited for any adjustments for duplicate card transactions and shall be liable for any chargebacks which may result there from.
 - 14.6.3 NOT deposit any card transaction for the purpose of obtaining or providing a cash advance either on PARTNER's card or the card of any other party.
 - 14.6.4 NOT obtain authorization for, nor process sales on any card PARTNER, PARTNER's immediate family and/or PARTNER's staff is authorized to use. Processing PARTNER's own card grounds for immediate termination.
 - 14.6.5 NOT knowingly accept any fraudulent card transaction.
 - 14.6.6 NOT present for processing or credit, directly or indirectly, a card transaction which originated with any other PARTNER or any other source.
 - 14.6.7 NOT present to COMCOPIOUS any card transaction representing the refinancing of an existing obligation of a cardholder including, but not limited to obligations (i) previously owed to PARTNER, (ii) arising from the dishonor of a cardholder's person check and / or (iii) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.
 - 14.6.8 NOT recycle transactions through or from COMCOPIOUS. If it is determined that after execution of an audit PARTNER has recycled transactions, PARTNER will be notified to cease and desist this practice and will be fined USD \$25,000.00. The fine will be deducted from PARTNER's settlement or in the event the settlement is insufficient deducted from the reserve account, or from any other account held by COMCOPIOUS or the Financial Institution for PARTNER.
 - 14.6.9 NOT re-submit failed transactions through COMCOPIOUS within a 24 hour period.
 - 14.6.10 PARTNER will be required to provide both the IP address and a valid email address for each cardholder's transaction and any other information from time-to-time instructed by COMCOPIOUS.
 - 14.6.11 Accept transactions for Visa and Mastercard and convert the amount themselves. All transactions submitted are processed and settled.
- 14.7 PARTNER acknowledges that an authorization provides only that the cardholder account has sufficient credit available to cover the amount of the current sale and that an authorization (i) is not a guarantee that the card transaction will not be subject to dispute or chargeback or (ii) does not warranty the identity of the cardholder.

14.8 Upon activation of this agreement PARTNER's web pages must display the written requirements imposed by COMCOPIOUS and PARTNER is required to provide screen shots of these pages. Any changes to these pages without notification to COMCOPIOUS will result in immediate suspension of the account. PARTNER must also provide the staff of COMCOPIOUS access to these pages. If usernames and pass codes are required to access this information, PARTNER is required to provide these details upon account activation. Furthermore, PARTNER must provide all URLs which the account will be used to process with. The customer service email address and telephone number for each URL must also be provided.

COMCOPIOUS LIMITED

PARTNER


Full Name of Signer:


Full Name of Signer: Nirvay Debipersad

Title: Director

Title: Director

Date: 22/04/2020

Date: 22/04/2020

EXHIBIT G



Kotaro Shimogori Fraud Warning

Kotaro Shimogori has stolen in excess of \$500000.00+ from merchants who obtained merchant processing from one of his companies. No reason has been given for the theft of funds, outside of a story about his bank allegedly freezing his funds. He has become unresponsive to all attempts to contact him. His companies continue to process Credit Card transactions.

Do not be one of the merchants who gets scammed by this individual.

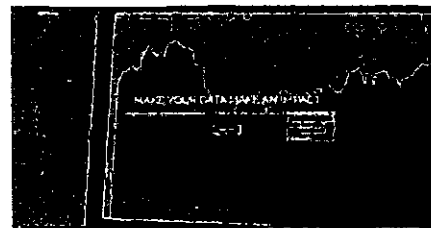
His Websites



(<http://www.icanpay.cn.com/>)
www.icanpay.cn.com
 (<http://www.icanpay.cn.com/>)



(<http://www.comcopious.cn.com/>)
www.comcopious.cn.com
 (<http://www.comcopious.cn.com/>)



(<http://www.shimogori.com/>)
www.shimogori.com
 (<http://www.shimogori.com/>)

Other Victims

to me

1:38 PM (4 hours ago)

I was told this site though friend of mine who were his previous partner. He told me he typed Kotaro's name and the web site appeared.

Kotaro took the money from his company bank account by submitting the fake document to bank. I don't know if he has the video of Kotaro going to bank and submitting the document, but when he found out that no money left at company account, he asked the bank the situation and they found out that Kotaro was on video submitting the document to bank.

I know he took US\$150,000 through that method and over US\$200,000 plus from the partner's clients. They told Kotaro to come to Japan to explain then he confessed what he has done written and signed by him. They tried to get the money back from Kotaro but basically he run away. They thought about reporting to police, but not being American citizen, it is just too hard to make steps and also this was causing extra money so they are holding at the moment.

My damage was about US\$70,000. He was telling us that he will ask system company to create the system for credit card transaction and total project was US\$200,000 and I paid 1/3 of it. I was in touch with another American guy who paid US\$20,000 to Kotaro through this fake project he make up. The evidence I have is recording conversations, since we were having skype meeting once a week. At that time, Kotaro confessed about his fraud and I have that recorded on my phone.

Associates



(<https://www.linkedin.com/in/cale-gibson-4ba35768/>)

Cale Gibson

(<https://www.linkedin.com/in/cale-gibson-4ba35768/>)



(<https://www.linkedin.com/in/ray-serlon-95a02688/>)

Ray Serlon

(<https://www.linkedin.com/in/ray-serlon-95a02688/>)

ICANPAY REDDIT THREAD:

solution, though they do appear to be an honest business.

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[-] [kratom-og](#) 1 point 2 months ago

Were you ever paid? I'm really thinking icanpay is a scam

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[-] [Ang1271989](#) 1 point 6 months ago

You have to process \$2500 to make a withdrawal. They offered to refund my application fee but I told them that I would wait it out. Starting to reconsider that. Pretty certain they are not a scam, but they do not have an adequate solution for processing kratom, which I sell as well

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[-] [kratom-og](#) 1 point 6 months ago

I have surpassed that and yet to be paid.. Bank issues I was told. Last two payments skipped. 1/30 approval rate at the moment. I removed the processor until I get paid

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[-] [Youthtrends2](#) 1 point 6 months ago

I have over 20k waiting to be paid, they have already skipped a week and a half. I Have been unable to process as well, approval rate is at 1/20 Haven't got my first payout.

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[-] [Ang1271989](#) 1 point 6 months ago

Damn sorry to hear that. Did you ever get a payout since you began using iCanPay? My situation was that I signed up and processing went down immediately. After reading what you guys said, it could have been a blessing in disguise. I hope not though because I was hoing on using them once they got their shit together.

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[-] [Youthtrends2](#) 1 point 6 months ago

Did you ever get a payout from them?

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[-] [kratom-og](#) 1 point 6 months ago

Nope and the company who referred me is now questioning the legitimacy of it.

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[-] [Youthtrends2](#) 1 point 6 months ago

what did the referring company say?

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[-] [kratom-og](#) 1 point 6 months ago

That it would be wise to not use the processors until you get paid. I just found that icanpay try to snag two \$500 charges on my card on 5-23. Called support, they traced to buy to Corncopious, which is icanpay. She was not able to say what I bought from them. Cancelled payment and credit card. I'd be really concerned b and proactive here

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[-] [0100011001001011](#) 1 point 11 months ago

Well, Sophos blocked their web page for me... I wouldn't go near it.

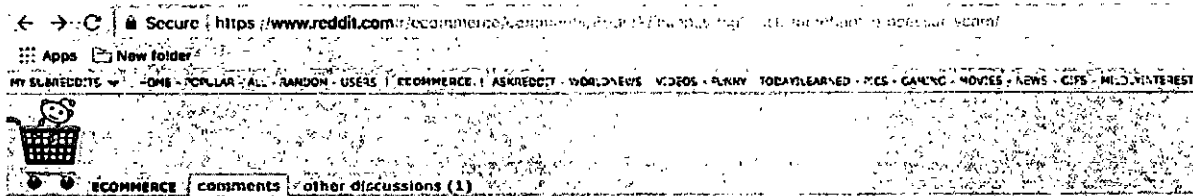
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[-] [standover_man](#) 2 points 11 months ago

(https://www.reddit.com/r/ecommerce/comments/5w60tv/icanpay_hidden_gam_or_a_bad_time_waiting_to/)

ICANPAY REDDIT THREAD 2 (View full thread here

(https://www.reddit.com/r/ecommerce/comments/8udnrk/icanpay_high_risk_merchant_processor_scam/)):



ICanPay High Risk Merchant Processor Scam

submitted 1 day ago by ICanPay4900

Hi,

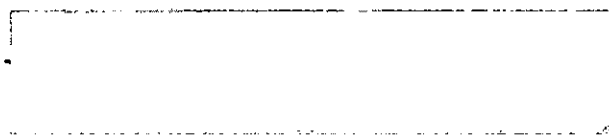
We got ripped off by ICanPay in excess of \$100k. Please consider this a PSA to avoid them.

If you did business with ICanPay and they ripped you off in excess of \$10k please get in touch with me via PM. We are planning to sue. We are using one of the best law firms for cases like this, the more merchants we have the more likely we are to see our money back or these scumbags behind bars.

7 comments show save hide give gold report

all 7 comments

sorted by: best



save

content policy formatting help

[-] notmerchant199 5 points 13 hours ago

✦ We got taken for \$85000.

We never even received 1 payout. We took a chance and ran that volume over the course of 3 weeks before realizing they weren't going to pay. It nearly destroyed our business.

Initially, Kotaro seemed sincere about getting our money back. Now his stance has changed, he's stating to merchants that he's not really obligated to return any of the money.

We aren't at all optimistic about seeing our money again. Please be warned, Kotaro Shimogori WILL steal your money.

permalink embed save edit disable inbox replies delete reply

[-] TheMiddle-AgedWaiter 4 points 1 day ago

✦ cross post this in r/cbd I see them discussed there a lot. Sorry for your loss.

permalink embed save report give gold reply

[-] gun_mba 2 points 13 hours ago

✦ This seems like the case with all high risk processors. If not initially they will wait for a little while and then scam you claiming GBPP.

Any references for good high risk merchants?

permalink embed save report give gold reply

[-] hampicoted 1 point 4 hours ago

✦ We have been with our merchant provider for nearly a year without any issue... When we signed up wit them, they provided numerous merchant references in the CBD space. The company is BMJ Group and they are a gold member with the National Hemo Association. They dont charge any up front fees and only charge their setup fee when you are

If you have been a victim of this individual, please contact us below, as we will soon be starting legal proceedings against this individual.

Full Name

Email

Enter Your Message

Send



EXHIBIT H

MEMORANDUM OF UNDERSTANDING

Between

PAN DIGITAL NETWORK LIMITED

And

HELEXO PTE. LTD.

1. The Parties hereto wish to reiterate their commitment to one another to keep intact and continue their mutually beneficial commercial relationship.
2. Pan Digital Network Limited (hereinafter referred to as "*Pan Digital*") is a company registered in the United Kingdom with company number 10632334 and registered offices situated at Belmont Cottage, Hollymoor Road, Hollymoorside, Chesterfield, England, S42 7 DS. It was previously called Comcopious UK Limited.
3. Kotaro Shimogori is a director and Person of Significant Control of Pan Digital.
4. Helexo Pte Ltd (hereinafter referred to as "*Helexo*") is a company registered in Singapore with company number 201812601C and registered offices situated at 300 Tampines Avenue 5 #09-02, Income at Tampines Junction, Singapore.
5. Pan Digital is indebted to Helexo in the total sum of US\$ 1, 361 738.00 (ONE MILLION THREE HUNDRED AND SIXTY-ONE THOUSAND SEVEN HUNDRED AND THIRTY-EIGHT US DOLLARS).
6. Pan Digital shall settle its indebtedness of the outstanding funds to Helexo as follows:
 - 6.1. Payment of US\$ 272,347.60 payable on or before 17 September 2021.
 - 6.2. Payment of US\$ 272,347.60 payable on or before 24 September 2021.
 - 6.3. Payment of US\$ 272,347.60 payable on or before 01 October 2021.
 - 6.4. Payment of US\$ 272,347.60 payable on or before 08 October 2021.
 - 6.5. Payment of US\$ 272,347.60 payable on or before 15 October 2021.
7. Pan Digital shall provide a written payment advice to Helexo for each of the payments at least 24 hours before each payment is effected.
8. In the event that Pan Digital is unable to make any of the payments on time then it shall forthwith and in writing advise Helexo:
 - 8.1. of any reason for its failure to make such payment timeously; and
 - 8.2. the revised date upon which such payment will be made.

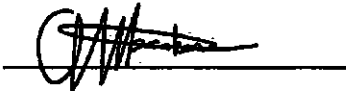
9. The failure by Pan Digital to make any payments timeously shall not affect any other payments that are due, owing and payable by Pan Digital to Helexo.
10. Purely as a gesture of good faith and to show a commitment to continuing a mutually beneficial relationship with Pan Digital, Helexo shall continue to process with Pan Digital and shall endeavor to process a minimum of 15% of the outstanding funds amount (equivalent to US\$ 204,260.70) in a new processing week, and such new processing shall be settled by Pan Digital weekly, two weeks in arrear under the commercial terms previously agreed.
11. Any payments due by Pan Digital to Helexo are however not dependent on such further processing.
12. In the event that Pan Digital fails to make any payment to Helexo (either the outstanding funds or new processing settlements) then Helexo is entitled to forthwith cease all further processing with Pan Digital until payment is honoured by Pan Digital.

Signed by the parties:



For and on behalf of Pan Digital Network Limited

Date: 8 September 2021



For and on behalf of Helexo

Date: 8 September 2021