

## II. BACKGROUND FACTS

### *TMS engages thousands of sales representatives to conduct marketing efforts on its behalf*

Defendant TMS is a merchant processing company that sells point of sale software and equipment to enable businesses to accept credit card transactions. (*See* Declaration of Patrick H. Peluso (“Peluso Decl.”) ¶ 2, attached hereto as Grp. Ex. A.) [REDACTED]

[REDACTED] (TMS Depo. Tr., excerpts of which are attached hereto as Ex. B, at 36:9-14; 63:2-6.) [REDACTED]

[REDACTED] (TMS Sales Representative Agreement with Triumph (hereafter “Triumph Agreement”), pg. 3, attached hereto as Ex. C; *see also* Ex. B, at 22:2-15.)

[REDACTED] (Ex. B, at 24:14-18.) [REDACTED]

[REDACTED] (Ex. B, at 27:20-24.) If TMS approves the application, the client is sent TMS equipment to start processing credit cards. (Triumph Depo. Tr., excerpts of which are attached hereto as Ex. D, at 30:16-18.) TMS and its sales representatives then each receive a share of the transactional fees associated with the client’s credit card processing. (Ex. D, at 35:3-21.) Sales representatives can also receive upfront bonuses based on equipment that was sold. (Ex. D, at 34:18-24.)

[REDACTED] (Ex. B, at 33:10-15.) [REDACTED]

[REDACTED] (Ex. B, at 26:8-28:12; 46:12-47:12.)

[REDACTED] (Ex. B, at 9:7-16.) [REDACTED]

[REDACTED] (Triumph Agreement, Ex. C, pg. 3.)