

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff

v.

VERIFONE SYSTEMS, INC.

and

HYPERCOM CORPORATION

Defendants.

Case: 1:11-cv-00887 (GK)

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” means Gores or a buyer designated by a trustee to whom Defendants shall divest the Divestiture Assets.

B. “Defendants” means VeriFone and Hypercom, as defined below, and any successor or assign to all or substantially all of the business or assets of VeriFone or Hypercom involved in the provision of Point of Sale Terminals.

C. “Divestiture Assets” means Hypercom’s entire business engaged in the development, production, distribution, and sale of POS Terminals in the United States, including, but not limited to:

1. All facilities used in the operation of Hypercom’s United States POS Terminal business, including Hypercom’s repair facility located in Delegacion Benito Juarez, Mexico.
2. All existing inventory of Hypercom’s POS Terminal devices including parts.
3. All tangible assets used to operate the Divestiture Assets, including, but not limited to, all research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies and other tangible property; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Assets, including supply agreements and current POS Terminal certifications; all customer lists, customer contracts, accounts, and credit records; all repair and performance records and all other records relating to the Divestiture Assets.
4. Irrevocable, exclusive, transferable, fully paid, royalty free, non-sub licensable license to all patents and other intangible assets related to the development, production, distribution, and sale of POS Terminals in the United States, including, but not limited to, all licenses and sublicenses, software and hardware intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer

software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the Divestiture Assets, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Divestiture Assets, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

5. In the event that a trustee is appointed, the trustee may, at the trustee's sole discretion, include any assets, including tangible assets as well as patents and other intangible assets that extend beyond the United States, if the trustee finds it necessary to enable the Acquirer to compete effectively in the POS Terminals Industry in the United States and accomplish the divestiture of Hypercom's POS Terminals business.

D. "Gores" means The Gores Group, LLC., with headquarters in Los Angeles, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Hypercom" means Defendant Hypercom Corporation, a Delaware corporation, with headquarters in Scottsdale, Arizona, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Merger Agreement” means the Agreement and Plan of Merger, dated as of November 17, 2010, by and among Hypercom Corporation, VeriFone Systems, Inc. and Honey Acquisition Company.

G. “Point of Sale (POS) Terminals” means devices that enable retailers and other firms to accept a wide range of non-cash payment types, such as credit cards and debit cards. POS Terminals can operate on a standalone basis or be connected to an electronic cash register or similar device as part of an integrated point of sale system. Standalone POS Terminals are commonly referred to in the industry as “countertop” machines. Integrated POS Terminals are commonly referred to in the industry as “multi-lane” or “customer facing.”

H. “POS Terminals Industry” means the market for POS Terminals including countertop and integrated POS Terminals.

I. “Transaction” means VeriFone’s proposed merger with Hypercom.

J. “VeriFone” means Defendant VeriFone Systems, Inc., a Delaware corporation, headquartered in San Jose, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

II. OBJECTIVES

The Proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestitures of the Divestiture Assets to the Acquirer for the purpose of establishing a viable

competitor in the POS Terminals Industry in order to remedy the effects that the United States alleges would otherwise result from VeriFone's merger with Hypercom. This Hold Separate Stipulation and Order ensures that, until divestiture of the Divestiture Assets is accomplished: (1) the Divestiture Assets will be preserved; (2) Hypercom will remain an independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by VeriFone, and (3) competition is maintained between VeriFone and Hypercom.

III. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that the Court may file and enter a Final Judgment in the form attached hereto as Exhibit A, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA. The publication shall be arranged no later than five (5) calendar days after the Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper

notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which notice was published.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

D. Defendants shall not consummate the Transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

E. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. HOLD SEPARATE PROVISIONS

For the duration of the period specified in Section VI:

A. VeriFone and Hypercom shall operate as independent, ongoing, economically viable competitive businesses separate, distinct and apart from each other. VeriFone may ensure that Hypercom complies with VeriFone's policies and procedures relating to compliance with FCPA, environmental, health, safety, human resource, and securities or other laws and regulations. Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, Defendants will inform the United States of the steps they have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall not coordinate any aspect of their commercial operations, including research and development, design, testing, manufacture, bidding, provision of services, marketing or sales, except to the extent such coordination would have occurred in the ordinary course and be permissible under the law pursuant to any agreements (including, without limitation, and subject to Paragraph IV.C. hereof, the Merger Agreement) that existed between the Defendants prior to the date of the filing of the Complaint in this matter. Other than as excepted above, Defendants shall take all steps necessary to ensure that:

- (1) the management of Hypercom will not be influenced by VeriFone;

- (2) the books, records, competitively sensitive sales, marketing, cost, and pricing information, and decision-making concerning research and development, design, provision of services, bidding, marketing, sales of VeriFone and Hypercom will be kept separate and apart;
- (3) all reasonable efforts are used to maintain and increase their respective research and development and sales and revenues in the sale of POS Terminals and the provision of related services;
- (4) sufficient working capital and lines and sources of credit are made available to enable Hypercom to continue to operate as an economically viable and competitive, ongoing business; and
- (5) Defendants will both be maintained and operated as ongoing, economically viable, and active competitors in the sale of POS Terminals and the provision of related services.

C. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

D. Other than for cause, Defendants shall not transfer or terminate, or alter to the detriment of any employee, any current employment or salary agreements for any Hypercom employee who, on the date of entry of this Hold Separate Stipulation and Order is or may be subject to the Acquirer(s)'s right to hire pursuant to the proposed Final Judgment.

E. Defendants shall take all steps necessary to ensure that the tangible Divestiture Assets and facilities are fully maintained in operable condition at no less than their capability and shall maintain and adhere to normal repair and maintenance schedules.

F. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income from their respective United States' operations.

G. Defendants shall appoint a person or persons to oversee Hypercom, who will be responsible for Defendants' compliance with this section. This person shall have complete managerial responsibility for Hypercom, subject to the provisions of this Hold Separate Stipulation and Order. In the event such person is unable to perform his duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale or use of the Divestiture Assets.

I. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture of the Divestiture Assets pursuant to the Final Judgment to an Acquirer acceptable to the United States.

VI. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) the divestiture of the Divestiture Assets in accordance with the proposed Final Judgment has been completed, or (2) further Order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: August 4, 2011

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/_____
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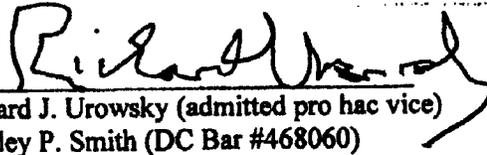
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ORDER

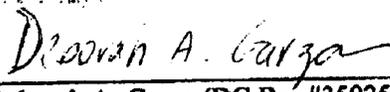
IT IS SO ORDERED by the Court, this ____th day of _____, 2011

United States District Judge

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ORDER

IT IS SO ORDERED by the Court, this _____th day of _____, 2011

United States District Judge