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**IN THE MATTER OF:** \*  
\*  
**USIO, INC.** \*  
**f/k/a PAYMENT DATA SYSTEMS, INC.** \*  
\*  
**(“Respondent”)** \*  
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\* \* \* \* \*

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**  
  
**MATTER NO. HHDCV2161422765**

### I. INTRODUCTION

A hearing in the above-referenced matter was conducted to determine whether there is sufficient evidence in the record to support allegations that Respondent engaged in unlicensed money transmission activity in violation of Section 36a-597(a) of the Connecticut General Statutes. The Commissioner, through the Consumer Credit Division (“Division”) of the Department of Banking, investigated the activities of Respondent, and found reason to believe Respondent engaged in unlicensed money transmission. On March 16, 2021, the Commissioner issued a Notice of intent to Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty, and Notice of Right to Hearing (“Notice”). The Notice is incorporated by reference and attached herein as HO Exhibit 1.

After due notice a remote hearing was conducted on September 3, 2021. At the hearing the Department alleged Respondent engaged in unlicensed money transmission from January 3, 2013, through July 13, 2017. The parties concur that between 2013 and 2017, two Connecticut residents used Respondent’s bill payment services.<sup>1</sup>

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<sup>1</sup> The State of Connecticut Department of Banking and Respondent, USIO, Inc. f/k/aPayment Data Systems, Inc. submitted the following nine (9) joint stipulations:

- (1) USIO, Inc. is a Nevada Corporation with its principal place of business in San Antonio, Texas;
- (2) At the time the Department’s Complaint was filed, USIO provided four types of services: (a) Internet bill payment services for third parties; (b) ACH processing for third-party merchants; (c) credit card processing services; and prepaid card processing for bank issuers;
- (3) On July 27, 2016, the Department alleged that USIO was engaged in money transmission without maintaining the required license to do so under the money transmission act statutes in effect;
- (4) USIO has denied that it engages in money transmission under CONN. GEN. STAT. §36a-596(6), as amended;
- (5) Between 2013 and 2017, two (2) Connecticut residents used the bill payment services;
- (6) USIO enters into a Payment Processing Agreement with merchants for ACH processing. Under these agreements, the customer grants USIO the authority to act as an agent of the customer to initiate payment processing. USIO in turn contracts with a third party that initiates the electronic funds transfers through the ACH network;
- (7) In connection with third party origination services for third parties, USIO solely acts as the agent for its merchant customers in providing the processing by which a merchant receives payment from its customers. USIO is not involved in the transmission of money from the customer to a merchant or vice versa;
- (8) When providing credit card merchant authorization services, USIO acts as an agent of the merchant and as an Independent Sales Organization (ISO), under applicable Card Issuer Regulations, of the Member Bank. USIO does not hold, administer, or control movement or settlement of funds;
- (9) USIO provides third-party prepaid cards processing services for pre-paid cards. USIO solely as the agent of the Member Bank. Under the agreement between USIO and the Member Bank, USIO only provides ‘certain marketing, prepaid card processing and program management services.’ USIO does not hold, administer, or control movement or settlement of funds relating to pre-paid cards.

## II. PROCEDURAL HISTORY

As a result of an investigation, the Commissioner found reason to believe that Respondent violated Section 36a-597(a) of the Connecticut General Statutes, and issued an order to cease and desist against Respondent pursuant to Sections 36a-608(c) and 36a-52(a) of the Connecticut General Statutes. On March 16, 2021, the Commissioner issued the Notice alleging violation of Connecticut General Statutes under the Commissioner's jurisdiction. On March 17, 2021, the Department sent the Notice by certified mail, return receipt requested, to Respondent, USIO, Inc., and out-of-state attorney Eric Pullen, both in San Antonio, Texas. The violation forms the basis to impose a civil penalty against Respondent pursuant to Sections 36a-608(c) and 36a-50(a) of the Connecticut General Statutes.

On March 24, 2021, Respondent timely requested a hearing. In accordance with Connecticut General Statutes and the Regulations of Connecticut State Agencies, on April 7, 2021, the Commissioner issued notification of a remote hearing concerning the allegations set forth in the Notice of March 16, 2021, against Respondent and designated the undersigned hearing officer. On May 19, 2021, Pullen filed an application to appear *pro hac vice* before the Department, appointing Connecticut attorney Daniel W. Cohen, in West Simsbury, Connecticut, as supporting local counsel. Attorneys Pullen and Cohen filed requests for a hearing in this matter.

On September 3, 2021, a virtual hearing was conducted using the Microsoft Teams software, held in accordance with Chapter 54 of the Connecticut General Statutes; Section 149 of June Special Session Public Act 21-2; Uniform Administrative Procedures Act (UAPA), and Department of Banking Remote Hearing Guidelines. Attorney Jeffrey Schuyler appeared on behalf of the Department. Anne Cappelli, Principal Financial Examiner, and Richard Lalor, Associate Examiner, both appeared on behalf of the Division. Attorneys Eric Pullen, *pro hac vice* counsel and Daniel W. Cohen, designated local counsel (observing) appeared on behalf of Respondent. Louis Anthony Hoch, Chief Executive Officer, USIO (formerly Payment Data Systems) since 1998, appeared as a witness on behalf of Respondent. (Tr. 67). Robert G. Dixon, CVR-M No. 857 Certified stenographer, provided the parties with a hearing transcript on September 15, 2021.

As provided by Regulations of Connecticut State Agencies, Section 36a-1-49, the Department filed a Post-Hearing Brief on October 15, 2021. Respondent filed a Response to the Departments Post-Hearing Brief, on October 20, 2021. Finally, the Department filed a Post-Hearing Reply Brief on October 29, 2021. An electronic copy of the Notification of Hearing and Designation of Hearing Officer was sent to attorney Pullen at [epullen@pulmanlaw.com](mailto:epullen@pulmanlaw.com); attorney Beckenstein, Hearing Officer, at [eric.beckenstein@ct.gov](mailto:eric.beckenstein@ct.gov); and Attorney Schuyler, at [Jeffrey.schuyler@ct.gov](mailto:Jeffrey.schuyler@ct.gov).

## III. FINDINGS OF FACT

### *Background and Investigation*

1. Respondent has used several corporate names, including Payment Data Systems, Inc., PDS, UCO, and currently USIO, Inc. The Hearing Officer provides a brief timeline with each name change, and then will use "Respondent." (Notice, HO Ex. 1).
2. Payment Data Systems, Inc., "PDS" filed Articles of Incorporation with the Nevada Secretary of State on or about June 4, 1998. PDS or "UCO Incorporated" offered payment processing services for merchants in the United States.

3. Between 2000 and 2013 Respondent operated bill payment service Bills.com. An agreement that does not appear in the record was in place between Respondent and licensed money transmitter CheckFree, Inc. Customers joined the bill payment service online, paying monthly subscription and transmission fees. (Tr. at 68-70). Respondent's bill payment service enabled customers to log onto a web portal to submit specific instructions and information including account numbers, payment address' and payment due dates for designated payees. (Tr. at 42-43; 73).
4. In 2013 Respondent parted ways with CheckFree, Inc., and began operating bill payment service BillX.com. (Tr. at 70-72). An agreement that does not appear in the record was in place between Respondent and licensed money transmitter Fifth Third Bank.
5. In April 2016, the Division notified Respondent that it had reason to believe Respondent was involved in unlicensed money transmission. (HO Ex. 1; Notice at 2). Respondent countered in a letter dated August 26, 2016, claiming "... PDS does not have the authority, contractual or otherwise, or any responsibility to handle any electronic funds transfer." (Respondent's Ex. 1 at 2; Tr at 50, 69-70).
6. Anne Cappelli, Principal Financial Examiner for the Division for thirty-three years, served as Financial Examiner for seventeen-years before attaining her current post in 2005. Since 2010 Cappelli was responsible for overseeing staff members including Richard Lawlor and money transmitters. Cappelli assigned Lawlor to work on an investigation of Respondent's alleged money transmission activities and oversaw the investigation. (Tr. at 33-34).
7. Consumers registered for online bill payment services using Respondent's web based portal. Consumers inputted personal bill payment information and payment instructions, affording Respondent access to the consumer's personal bank account. Respondent received the instructions from the web portal and then electronic bill payments for customers issued through the Automated Clearing House (ACH) network. (Tr. at 42-43). ACH is a national electronic payments system that enables payments to be issued from one financial institution to another. (NACHA Council for Electronic Billing and Payment (CEBP) Business-to-Business EIPP: Presentation Models and Payment Options Part Two: Payment Options (2001), p. 3-5).
8. Respondent could "print and mail" paper checks on behalf of consumers. For electronic payments, Respondent used its own funds from a designated account securely held by a third-party financial institution. After Respondent advanced a bill payment for a consumer, it took up to four-days before Respondent was reimbursed by the consumer. (DOB Ex. 14; DOB Post Hearing Brief at 1; Tr. at 13).
9. A redacted bill payment spreadsheet identifies two Connecticut consumers by name, account, state, and funds transferred through Respondent's web portal, including the date payment was scheduled. (DOB Ex. 14; Respondent Ex. 2; Joint Stip. #5; Tr. at 37, 39, 40). The consumers used Respondent's service for 204 bill payments between 2013 and 2017 for 204 bill payments totaling \$95,503.81. (Tr. at 98, DOB Post-Hearing Reply Brief at 1).

#### ***Underlying Payment Processing Framework***

10. Only designated financial institutions are authorized to access the ACH network and Respondent could not access the ACH Network directly but instead required a bank relationship. (Tr. at 68-

- 70). Respondent maintained agreements with banking institutions CheckFree Incorporated and Fifth Third Bank to issue electronic bill payments on behalf of consumers. (Tr. at 69,70, Findings at 12). Both institutions afforded Respondent access to Mastercard RPPS to perform electronic bill payments. (Respondent's Post Hearing Brief at 2; Tr. at 68-70, 75).
11. When ACH payments are used, the buyer and the seller establish a contractual agreement before the first payment, authorizing ACH payments. (NACHA Council for Electronic Billing and Payment (CEBP) Business-to-Business EIPP: Presentation Models and Payment Options Part Two: Payment Options at 3-5 (2001).
  12. Respondent required a third-party to access MasterCard Remote Payment and Presentment Service ("RPPS"). (Tr. at 68). Respondent entered Payment Processing Agreements with merchants for ACH processing. (Tr. at 70, 71; Joint Stip. #6). None of these agreements appear in the record. "An agreement or contractual relationship must be in place between the buyer, the buyer's settlement bank /sponsor bank, and RPPS ..." (NACHA Council for Electronic Billing and Payment (CEBP) Business-to-Business EIPP: Presentation Models and Payment Options Part Two: Payment Options at 16-17 (2001); Findings at 2,4,5).
  13. RPPS maintained an agreement with Fifth Third Bank to process payments at the request of Respondent. This agreement does not appear in the record.
  14. Respondent relied on agreements with Fifth Third Bank and RPPS to initiate the transmission of payments. (Tr. at 72-73; Findings at 12). Respondent did not introduce documentary evidence of third-party transaction processing, such as agreements or contractual arrangements with third-party processors or RPPS. "[T]he only evidence introduced to show that a third-party bank was processing the ACH network payments was testimony from Respondent's CEO. No documentary evidence was provided, even after a request from the Department." (DOB Post-Hearing Reply Brief at 1; Findings at 2,5).
  15. During all times relevant to these proceedings, licensure was required in Connecticut to legally engage in money transmission. Since 2017 Respondent has not engaged in unlicensed money transmission, including bill payment services to Connecticut customers. (Joint Stip.; Footnote 1; Tr. at 15; Section 36a-597(a) of Connecticut General Statutes).

***Principal Financial Examiner Anne Cappelli, Investigation and Department Policy***

16. Principal Examiner Cappelli supervised Consumer Credit Division staff including Associate Examiner Richard Lalor, assigned to investigate allegations that Respondent engaged in unlicensed money transmission. (Tr. at 35, 37). Cappelli found that activity cited in a bill payment spreadsheet (DOB Ex. 14) constitutes money transmission, regardless of whether Respondent used its own funds prior to repayment from the consumer. (DOB Exhibit 2; Respondent Ex. 14). "As far as Connecticut Statutes ... the opinion letter... while funds are theirs, they're still doing the service on behalf of the consumer who is ... submitting their funds at a later date, but such is still the act of transmission ... money transmission within our definition." (Tr. at 42). "It's transmitting money or monetary value within the U.S." (Tr. at 46-47).
17. Cappelli reviewed the file for this matter "at the time" in 2017 but could not confirm or deny particular information including e-mails conveyed by Respondent to Lawlor in 2017 regarding the role of Fifth Third Bank in Respondent's bill payment activity. (Tr. at 51-52).

18. Cappelli testified that the Department's money transmission policy position is outlined in policy letters that span at least from 2004 through 2015. The position has consistently been applied through 2017. (DOB Ex. 13; Tr. at 48; DOB Ex. 1; DOB Post-Hearing Brief, Ex. A).
19. A Department opinion letter dated June 3, 2004, provides guidance for characterizing money transmitters. In a letter of May 19, 2010, Principal Attorney Doniel Kitt, writing for then Department Commissioner Howard Pitkin, references this 2004 letter, indicating that regardless of whether Respondent issued its own funds prior to being reimbursed, the movement of funds constitutes money transmission under section 36a-600 of the General Statutes: "In an opinion letter dated June 3, 2004... this department opined that the language in the definition of 'money transmission' encompasses transmitting funds to customers' creditors prior to receiving the customers' funds. Likewise ... receiving the cash deposited by the independent cash management company constitutes 'money transmission' and ... would require licensure under section 36a-600 of the 2010 Supplement to the General Statutes prior to reengaging in such activity in Connecticut." (DOB Ex. 13; DOB Post-Hearing Brief, Ex. A at 5).
20. Respondent sought to distinguish the present matter from the facts underlying the 2004 opinion letter, suggesting that in 2004 the business entity unilaterally initiated the transmission of funds, whereas Respondent in this case relied on a third-party. Cappelli downplayed the importance of which party "initiated" the funding: "I would say as far as initiating I would say that would not make a difference as to the requirement for a license." Cappelli added, "banks don't maintain money transmission licenses," (Tr. at 55).
21. Cappelli acknowledged that the 2004 opinion letter fails to outline underlying facts of the case. (Tr. at 53, 55; Findings 24). Cappelli explained that despite the absence of background facts, the opinion still provides guidance because the party that "initiates" the movement of funds in terms of characterizing the transaction under transmission licensing requirements is not crucial. "[A]s far as initiating ... that would not make a difference as to the requirement for a license." (Tr. at 55-56). Rather the focus should be "... who holds those consumer funds when they are moved from their account." (Tr. at 55-56). Cappelli highlighted the importance of the party in possession of the funds: "We would look at who holds the funds, what accounts, who has custodial rights to the accounts." (Tr. at 55-57).
22. A similar position is expressed in a Department opinion dated August 21, 2015, concerning applicability of the Money Transmission Act to the case of a paycheck processor (hereinafter "X") that requires the possession of funds for future transmission. Funds are transferred from the employer's bank account to X one-day prior to being disbursed. "Inasmuch as funds are held in X's accounts before being sent to intended payees in connection with X's services, it is the position of this department that X's proposed activities would constitute engaging in the business of receiving money for current or future transmission." (DOB Post-Hearing Brief, Ex. A, at 1-2).

***Testimony of CEO Louis Hoch and the Underlying Bill Payment Process***

23. Since 2016 Respondent maintained that because a third-party "initiated" fund transfers in the bill payment process, Respondent's actions do not constitute "receiving money or monetary value for current or future transmission." (Respondent's Ex, 1).
24. Hoch testified that Fifth Third Bank processed electronic ACH network payments on behalf of

Respondent for consumers and that Respondent never directly initiated bill payment transactions. (DOB Post Hearing Reply Brief at 2; Tr. at 73). Instead, it relied on the RPPS system and issued an instruction to Fifth Third Bank. (Tr. at 77-78). The claim is that because Fifth Third Bank rather than Respondent was responsible for initiating the movement of funds and debiting the consumer's account, Respondent does not meet the definition of money transmitter and therefore did not require licensure. (Tr at 78).

25. Respondent processed paper checks in a straightforward manner. Respondent would simply "draft and mail" paper checks "directly off the consumer's bank account." (DOB Ex. 14; Transcript at 40-41). To initiate electronic payments, Respondent asserted for the first time at the hearing that it relied specifically on a contractual arrangement with Fifth Third Bank, a federally chartered financial institution (Respondent's Post Hearing Response Brief at 2; Tr. at 17). Fifth Third Bank utilized Respondent's own "reserved funds" to issue timely bill payments for consumers, up to four-days before the consumer reimbursed Respondent. (Tr., at 14-15; Department Exhibits 1-9; DOB Post-Hearing Reply Brief at 1-2).

#### ***Advertising and Solicitation under Connecticut General Statutes Section 36a-597(a)***

26. Connecticut General Statutes Section 36a-597(a) provides, in pertinent part, that "No person shall engage in the business of money transmission ... or advertise or solicit such services without a license issued by the Commissioner..." (Tr. at 61). Defining language under Connecticut General Statutes 36a-596 has remained the same from 2013 through 2017. (DOB Ex. 1-12; Tr. at 44).
27. Cappelli opined during the hearing that use of a website with an offer to make payments on behalf of individuals to creditors (bill payments) constitutes advertising or soliciting money transmission services under Connecticut General Statutes Section 36a-597(a). (Tr at 62, 63).
28. Cappelli was unaware of specific exchanges between Pullen and Lalor in 2017 regarding the alleged involvement of Third Fifth Bank and has not viewed particular advertisements or solicitations of Respondent. (Tr at 64). Outside of Hoch's testimony, the record fails to establish specific means by which consumers learned of Respondent's bill pay service.
29. Respondent engaged in advertising and solicitation for its bill payment services through its web portal. Connecticut consumers became aware of Respondent's web portal by viewing the portal itself online. "The website described the service, whereby Connecticut consumers can have their bills paid and then essentially repay PDS through the system. (Tr. at 86-87, 94).

## **IV. CONCLUSIONS OF LAW**

### ***Jurisdiction and Procedure***

The Banking Commissioner ("Commissioner") is charged with the administration of Part V of Chapter 668, Sections 36a-595 to 36a-612, inclusive, of the Connecticut General Statutes, known as the "Money Transmission Act". In accordance with Connecticut General Statutes, Section 36a-596; Sections 36a-52(a), 36a-50(a) and 4-177, and Section 36a-1-21 of the Regulations of Connecticut State Agencies, on April 7, 2021, the Commissioner issued notification of a remote hearing concerning the allegations set forth in the Notice of March 16, 2021, issued against Respondent.

Pursuant to the authority granted by Sections 36a-17 and 36a-608(a) of the Connecticut General Statutes, the Commissioner, through the Consumer Credit Division ("Division") of the Department of Banking, has investigated the activities of Respondent to determine if it has violated, is violating or is about to violate the provisions of the Connecticut General Statutes within the jurisdiction of the Commissioner ("Investigation"). The Commissioner's broad regulatory authority includes the power to impose civil penalties pursuant to Section 36a-50(a) of the Connecticut General Statutes, and to issue orders to cease and desist pursuant to Section 36a-52(a) of the Connecticut General Statutes.

Section 36a-50(a) of the Connecticut General Statutes provides, in pertinent part, that:

(1) Whenever the commissioner finds as the result of an investigation that any person has violated any provision of the general statutes within the jurisdiction of the commissioner . . . the commissioner may send a notice to such person by . . . certified mail, return receipt requested . . . . The notice shall be deemed received by the person on the earlier of the date of actual receipt or seven days after mailing or sending. Any such notice shall include: (A) A statement of the time, place, and nature of the hearing; (B) a statement of the legal authority and jurisdiction under which the hearing is to be held; (C) a reference to the particular sections of the general statutes . . . alleged to have been violated; (D) a short and plain statement of the matters asserted; (E) the maximum penalty that may be imposed for such violation; and (F) a statement indicating that - 5 - such person may file a written request for a hearing on the matters asserted not later than fourteen days after receipt of the notice.

(2) If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the matters asserted in the notice unless such person fails to appear at the hearing. After the hearing, if the commissioner finds that the person has violated any such provision . . . the commissioner may, in the commissioner's discretion and in addition to any other remedy authorized by law, order that a civil penalty not exceeding one hundred thousand dollars per violation be imposed upon such person. If such person . . . fails to appear at the hearing, the commissioner may, as the facts require, order that a civil penalty not exceeding one hundred thousand dollars per violation be imposed upon such person.

(3) Each action undertaken by the commissioner under this subsection shall be in accordance with the provisions of chapter 54.

Section 36a-52(a) of the Connecticut General Statutes provides, in pertinent part, that:

Whenever it appears to the commissioner that any person has violated, is violating or is about to violate any provision of the general statutes within the jurisdiction of the commissioner . . . the commissioner may send a notice to such person by . . . certified mail, return receipt requested . . . . The notice shall be deemed received by the person on the earlier of the date of actual receipt, or seven days after mailing or sending. Any such notice shall include: (1) A statement of the time,

place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the general statutes . . . alleged to have been violated; (4) a short and plain statement of the matters asserted; and (5) a statement indicating that such person may file a written request for a hearing on the matters asserted within fourteen days of receipt of the notice. If a hearing is requested within the time specified in the notice, the commissioner shall hold a hearing upon the matters asserted in the notice, unless the person fails to appear at the hearing. After the hearing, the commissioner shall determine whether an order to cease and desist should be issued against the person named in the notice. If the person . . . fails to appear at the hearing, the commissioner shall issue an order to cease and desist against the person. No such order shall be issued except in accordance with the provisions of chapter 54.

Sec. 36a-608. provides, in pertinent part, that:

Removal from office and from employment or retention.  
Temporary order to cease business. (c) Whenever it appears to the commissioner that (1) any person has violated, is violating or is about to violate any provision of sections 36a-595 to 36a-612, inclusive, or any regulation adopted under said sections, (2) any person is, was or would be a cause of the violation of any such provision or regulation due to an act or omission such person knew or should have known would contribute to such violation, or (3) any licensee has failed to pay a judgment ordered by any court within or outside of this state thirty days after the date on which the judgment becomes final or thirty days after the date of the expiration or termination of a stay of execution of the judgment, or engaged in fraud, intentional misrepresentation or gross negligence, or engaged in an unsafe or unsound practice, the commissioner may take action against such person in accordance with sections 36a-50 and 36a-52.

***Violation of Section 36a-597(a) of the Connecticut General Statutes***

Sec. 36a-597(a) provides, in pertinent part, that:

No person shall engage in the business of money transmission in this state, or advertise or solicit such services, without a main office license issued by the commissioner as provided in sections 36a-595 to 36a-612, inclusive, except as an authorized delegate of a person that has been issued a license by the commissioner and in accordance with section 36a-607. Any activity subject to licensure pursuant to sections 36a-595 to 36a-612, inclusive, shall be conducted from an office located in a state, as defined in section 36a-2. A person engaged in the business of money transmission is acting in this state under this section if such person: (1) Has a place of business located in this state, (2) receives money or monetary value in this state or from a person located in this state, (3) transmits money or monetary value from a location in this state or to a person located in this state, (4) issues stored value or payment



instruments that are sold in this state, or (5) sells stored value or payment instruments in this state. (b) Any person who knowingly engages in the business of money transmission in this state, without obtaining a license, as provided in sections 36a-595 to 36a-612, inclusive, shall be guilty of a class D felony. Each transaction in violation of the provisions of this subsection shall constitute a separate offense.

Section 36a-596 provides, in pertinent part, that:

Definitions (6): “Money transmission means engaging in the business of issuing or selling payment instruments or stored value, receiving money or monetary value for current or future transmission or the business of transmitting money or monetary value within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer.”

### ***Burden of Proof and Conclusions of Law***

Respondent alleges that the Department failed to meet its burden of proof showing by preponderance of the evidence that Respondent engaged in unlicensed money transmission. Despite relying on agreements with third-party transmitters and between Fifth Third Bank and RPPS, Respondent failed to introduce these documents, and therefore fell short of meeting its burden. The Hearing Officer draws an adverse inference that this evidence would not bolster Respondent’s case. Respondent asserts that the testimony of sole witness Hoch establishes that Respondent was not a money transmitter under Section 36a-597(a) of the Connecticut General Statutes. The Department successfully countered with testimony from Cappelli, corroborated by financial records and Department legal opinions spanning the course of more than a decade. Finally, Department records in addition to testimony from both sides support a finding that Respondent’s web portal included advertising for its bill pay transmission services that constitutes solicitation or advertising in violation of Section 36a-597(a) of the Connecticut General Statutes. (Tr. at 86, 94).

The applicable standard of proof in Connecticut administrative cases, including those involving fraud and severe sanctions, is the preponderance of the evidence standard. *Goldstar Medical Services v. Department of Social Services*, 288 Conn. 790, 819 (2008). “Review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency’s findings of basic fact and whether the conclusions drawn from those facts are reasonable.” *Id.* at 833. “An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred.” *Id.* “[T]here is no distinction between direct and circumstantial evidence so far as probative force is concerned. . . . In fact, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence.” *Id.* at 834 (internal citations omitted). The Department in this matter bears the ultimate burden of proving the elements of the offense by a preponderance of the evidence in support of the Commissioner’s findings. *See Bialowas v. Commissioner of Motor Vehicles*, 44 Conn. App. 702, 692 A. 2d 834 (1997).

Respondent relies on relationships with essential third-parties in the bill payment transmission process yet failed to introduce any original agreement or contract(s) that spell out the players involved and mechanics of Respondent’s electronic fund transmission process. Respondent failed to reference Fifth Third Bank until Hoch testified that Respondent maintained a specific agreement with this bank to

transfer funds. (Tr. at 93; DOB Post-Hearing Brief at 1). Details of an agreement for bill payment transmission payments lies at the heart of this matter. Therefore, Respondent's prior failure to cite an agreement explicitly with Fifth Third Bank constitutes a material change that tends to undermine Hoch's veracity. The testimony presented by Respondent fails to "conclusively [establish] that USIO did not engage in money transmission and did not require a Connecticut money transmission license." (Respondent's Post-Hearing Response Brief at 1,3; DOB Ex. 14; DOB Post-Hearing Brief at 1). When a witness testifies to a material fact or raises a critical issue which was not mentioned in a prior statement, the testimony is sufficiently inconsistent to call into question the credibility of the witness. *Adams v. AM Data Services Corp.*, Board Case No. 2566-BR-92 (1/8/93). The Hearing Officer reasonably infers that the evidence would likely prove unfavorable or insufficient to counter the evidence in the record. (Tr., at 77-78, 80) See *State v. Shashaty*. Failure to produce the purported evidence undermines Hoch's credibility and Respondent's claims that it relied solely on Fifth Third Bank to initiate payments. See *Kersias v. Town of Windsor Locks*.

The Department relies on a detailed spreadsheet authenticated by Cappelli (DOB Ex. 14), along with her corroborating testimony regarding the investigation of Respondent's bill payment activities, payment records and opinion letters from 2004, 2007, 2010, 2015, and 2019 regarding money transmission. (DOB Ex. 13; DOB Post-Hearing Brief, Ex. A). Credible first-hand testimony from the Division corroborated by portions of Hoch's testimony and bill payment transactions on behalf of Connecticut consumers, demonstrate by preponderance of the evidence that Respondent engaged in unlicensed money transmission and advertising in support thereof. A combination of testimony and corroborating documentary evidence, such as business records or agreements, is more persuasive than either testimony or records alone. See *Brown v. Connecticut Department of Mental Health, Addiction*, Case 04053 CRB-02-99-05 (July 27, 2000).

In the absence of an original agreement or corroborating documentary evidence from Respondent, the record fails to support a finding that a relationship between Respondent and Fifth Third Bank precludes Respondent from acting as a money transmitter subject to mandatory licensure in this state. The Department therefore has shown by preponderance of the evidence that Respondent engaged in unlicensed money transmission, including advertising and/ or solicitation via Respondent's web portal in violation of Section 36a-597(a) of the Connecticut General Statutes.

### ***Order to Cease and Desist and Imposition of Civil Penalty***

Section 36a-597(a) of Connecticut General Statutes provides, in part, "no person shall engage in the business of money transmission ... or advertise or solicit such services without a license issued by the Commissioner." Respondent's own web portal advertised Respondent's bill payment services and two Connecticut consumers relied on Respondent's bill payment services, as jointly stipulated. Via Respondent's bill payment web portal, Respondent's funds transferred to third-party payees on behalf of consumers in this state before Respondent received reimbursement from consumers in this state.

Respondent engaged in money transmission in this state without maintaining the required license which constitutes at least one violation of Section 36a-597(a) of Connecticut General Statutes, in effect prior to October 1, 2017. This violation forms the basis to issue (i) an order to cease and desist pursuant to Sections 36a-608(c) and 36a-52(a) of the Connecticut General Statutes; and (ii) forms the basis to impose a civil penalty pursuant to Sections 36a-608(c) and 36a-50(a) of the Connecticut General Statutes.

Section 36a-50(a) of the General Statutes of Connecticut gives the Commissioner discretion to order a civil penalty not exceeding One Hundred Thousand Dollars (\$100,000) per violation upon any person who has violated a law within the jurisdiction of the Commissioner. The Division seeks a lesser civil penalty of Twenty-Five Thousand Dollars (\$25,000) based on at least one violation of Section 36a-597(a).

The Connecticut Supreme Court has stated that “[t]he assessment of civil penalties is a fact-specific and broadly discretionary determination.” *Rocque v. Light Sources, Inc.*, 275 Conn. 420, 450 (2005) “If the penalty meted out is within the limits prescribed by law, the matter lies within the exercise of the [agency’s] discretion and cannot be successfully challenged unless the discretion has been abused. *Gibson v. Connecticut Medical Examining Board*, 141 Conn. 218, 230, 104 A.2d 890 (1954). During the Hearing on September 3, 2021, evidence was presented that is relevant to the civil penalty to be imposed upon Respondent. Several factors tend to support a lesser penalty in this matter. Only two Connecticut residents were customers of Respondent’s unlicensed bill payment transactions and Respondent has not engaged in such activity since 2017. The record fails to reveal that either party was harmed as a result of Respondent’s former activities. Department policy has supported the assessment of a Ten-Thousand Dollar (\$10,000) penalty in similar circumstances. Based on a review of the record, including Departmental policy, the undersigned finds that imposition of a civil penalty of Ten-Thousand Dollars (\$10,000) upon Respondent is warranted.

The undersigned finds that (i) Respondent committed at least one violation of Section 36a-597(a) of the General Statutes of Connecticut; and (ii) sufficient grounds exist for the Commissioner to impose a cease and desist order pursuant to Sections 36a-608(c) and 36a-52(a) of the Connecticut General Statutes; and (iii) a civil penalty of Ten-Thousand Dollars (\$10,000) against Respondent pursuant to Sections 36a-608(c) and 36a-50(a) of the General Statutes of Connecticut.

## V. ORDER

Based upon the record, I hereby find sufficient evidence to recommend to the Commissioner that the Commissioner **ORDER**, pursuant to Sections 36a-788, 36a-52(a), and 36a-50a of the General Statutes of Connecticut, that:

1. **USIO, INC., f/k/a PAYMENT DATA SYSTEMS, INC., CEASE AND DESIST** from violating Section 36a-608(c) and of the Connecticut General Statutes.
2. **A CIVIL PENALTY OF TEN-THOUSAND DOLLARS (\$10,000)** be imposed upon Respondent, USIO, Inc. f/k/a Payment Data Systems, Inc., to be remitted to the Department by cashier’s check, certified check or money order, made payable to “Treasurer, State of Connecticut”, no later than thirty (30) days from the date the Order is mailed; and
3. The Order shall become effective when mailed.

Dated at Hartford, Connecticut,  
this 11th day of January 2022.

\_\_\_\_\_/s/  
Jorge L. Perez  
Banking Commissioner

**CERTIFICATION**

I hereby certify that on this 12th day of January 2022, I caused to be mailed by certified mail, return receipt requested, the foregoing Findings of Fact, Conclusions of Law and Order in the matter of USIO, Inc., F/K/A Payment Data Systems, Inc. to Louis Hoch, CEO, USIO, Inc., f/k/a Payment Data Systems, Inc., 3611 Paesano's Parkway, Suite 300, San Antonio Texas 78231, certified mail no. 70211970000172098996, and to Respondent's counsel of record, to wit: Eric A. Pullen, Esq., Pulman, Cappuccio & Pullen, LLP, 2161 NW Military Highway, Suite 400 San Antonio, Texas 78213, certified mail no. 70211970000172099009; and Daniel Cohen, Esq., Troutman Pepper Hamilton Sanders, 2 Drumlin Road West Simsbury, Connecticut 06092, certified mail no. 70211970000172099016. I further certify that on this 12th day of January 2022, I e-mailed a copy of the foregoing Findings of Fact, Conclusions of Law and Order by email to Jeffrey T. Schuyler, Esq., counsel for the Department, State of Connecticut Department of Banking, Consumer Credit Division.

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/s/  
Julie Carta  
Administrative Assistant