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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Federal Trade Commission,  
Plaintiff,  
vs.  
ELH Consulting, LLC, et al,  
Defendants.

12-cv-2246-PHX-FJM  
  
STIPULATED FINAL JUDGMENT  
AND ORDER FOR PERMANENT  
INJUNCTION AND EQUITABLE  
RELIEF AS TO DEFENDANTS  
KEY TECH SOFTWARE  
SOLUTIONS, LLC, also d/b/a KEY  
ONE SOLUTIONS, and JUSTIN  
JOURNAY

Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed its Complaint for a Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310.

1 Plaintiff and Defendants Key Tech Software Solutions, LLC, also d/b/a Key  
2 One Solutions, and Justin Journay (“Stipulating Defendants”), have agreed to  
3 entry of this Stipulated Final Judgment and Order for Permanent Injunction  
4 (“Order”) by this Court in order to resolve all claims against Stipulating  
5 Defendants in this action. Plaintiff and Stipulating Defendants have consented  
6 to entry of this Order without trial or adjudication of any issue of law or fact  
7 herein. The Receiver did not file an objection, and the time for doing so has  
8 expired.

9 NOW THEREFORE , Plaintiff and Stipulating Defendants, having  
10 requested the Court to enter this Order, and the Court having considered the  
11 Order reached between the parties,

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1 allegations set forth in the Commission's Complaint, except as specifically  
2 stated in this Order. Only for purposes of this action, Stipulating Defendants  
3 admit the facts necessary to establish jurisdiction.

4 7. Stipulating Defendants waive: (a) all rights to seek judicial  
5 review or otherwise challenge or contest the validity of this Order; (b) any  
6 claim that any of them may have against the Commission, its employees,  
7 representatives, or agents; (c) all claims under the Equal Access to Justice Act,  
8 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64  
9 (1996); and (d) any rights to atp.t fi78re pr3863-64

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1 design, text, or use of images of any Internet website, email, or other  
2 electronic communication;

3 c. formulating or providing, or arranging for the formulation  
4 or provision of, any marketing support material or service, including but  
5 not limited to, web or Internet Protocol addresses or domain name  
6 registration for any Internet websites, affiliate marketing services, or  
7 media placement services;

8 d. providing names of, or assisting in the generation of,  
9 potential customers;

10 e. performing marketing, billing, or payment services of any  
11 kind; and

12 f. acting or serving as an owner, officer, director, manager,  
13 or principal of any entity.

14 3. "Corporate Defendant" means Key Tech Software Solutions,  
15 LLC, also d/b/a Key One Solutions, and its successors and assigns, as well as  
16 any subsidiaries, and any fictitious business entities or business names created  
17 or used by these entities, or any of them.

18 4. "Defendants" means the Individual Defendant and the Corporate  
19 Defendant, individually, collectively, or in any combination.

20 5. "Document" or "Documents" means any materials listed in  
21 Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs,  
22 charts, photographs, audio and video recordings, computer records, and other  
23 data compilations from which information can be obtained and translated, if  
24 necessary, into reasonably usable form through detection devices. A draft or  
25 nonidentical copy is a separate Document within the meaning of the term.

26 6. "Financial Institution  
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- 1 procure services and any other person or entity;
- 2 2. The nature, terms, conditions, and disclosures associated
- 3 with the advertising, marketing, promoting, offering for sale, or
- 4 sale of any product or service offered by Stipulating Defendants;
- 5 and
- 6 3. Third party approvals or endorsements, or the
- 7 substantiation for or the legality of advertising claims for any
- 8 product or service offered for sale by Stipulating Defendants;
- 9 B. Failing to disclose to any payment processor or financial
- 10 institution the following information: (1) the identity of the owner, manager,
- 11 director, or officer of the applicant for or holder of a merchant account, and (2)
- 12 any material connection between the owner, manager, director, or officer of the
- 13 applicant or holder of a merchant account and any person or entity who has
- 14 been or is placed in a merchant account monitoring program, has had a
- 15 merchant account terminated by a payment processor or a financial institution,
- 16 or has been fined or otherwise disciplined in connection with a merchant
- 17 account by a payment processor or a financial institution; and
- 18 C. Engaging in any practice that would have the effect of
- 19 circumventing any chargeback monitoring program or other risk management
- 20 program implemented by a credit card payment association.

21 II.

22 MONETARY JUDGMENT

23 IT IS FURTHER ORDERED that:

- 24 A. Judgment is hereby entered in favor of the Commission and
- 25 against Stipulating Defendants, jointly and severally, for equitable monetary
- 26 relief in the amount of \$47,440.00, provided, however, that the Judgment for
- 27 equitable monetary relief shall be suspended subject to the conditions set forth
- 28 in Section II of this Order;

- B. Stipulating Defendants relinquish all right, title, and interest in:

1 the funds held in the reserve account maintained in connection with the  
2 merchant agreement between Stipulating Defendants and Global Payments,  
3 Inc., and/or Century Bankcard Services, LLC, in favor of the Receiver;

4 C. All funds paid pursuant to this Order shall be deposited into a  
5 fund administered by the Commission or its agent to be used for equitable  
6 relief, including, but not limited to, consumer redress, and any attendant  
7 expenses for the administration of such equitable relief. Stipulating Defendants  
8 shall cooperate fully to assist the Commission in identifying consumers who  
9 may be entitled to redress pursuant to this Order. If the Commission  
10 determines, in its sole discretion, that direct redress to consumers is wholly or  
11 partially impracticable or funds remain after redress is completed, the  
12 Commission may apply any remaining funds for such other equitable relief  
13 (including consumer information remedies) as it determines to be reasonably  
14 related to Defendants' practices alleged in the Complaint. Any funds not used  
15 for such equitable relief shall be deposited to the United States Treasury as  
16 disgorgement. Stipulating Defendants shall have no right to challenge the  
17 Commission's choice of remedies under this Section. Stipulating Defendants  
18 shall have no right to contest the manner of distribution chosen by the  
19 Commission. This judgment for equitable monetary relief is solely remedial in  
20 nature and is not a fine, penalty, punitive assessment or forfeiture;

21 D. Stipulating Defendants relinquish all dominion, control, and title  
22 to the funds paid to the fullest extent permitted by law. Stipulating Defendants  
23 shall make no claim to or demand for return of the funds, directly or indirectly,  
24 through counsel or otherwise;

25 E. In accordance with 31 U.S.C. § 7701, as amended, Stipulating  
26 Defendants are hereby required, unless they already have done so, to furnish to  
27 the Commission their taxpayer identifying numbers (social security number or  
28 employer identification number), which shall be used for purposes of collecting  
and reporting on any delinquent amount arising out of Stipulating Defendants'

1 relationship with the government; and

2 F. Stipulating Defendants agree that the facts as alleged in the  
3 Complaint filed in this action shall be taken as true without further proof in any  
4 bankruptcy case or subsequent civil litigation pursued by the Commission to  
5 enforce its rights to any payment or money judgment pursuant to this Order,  
6 including, but not limited to, a nondischargeability complaint in any  
7 bankruptcy case. Stipulating Defendants further stipulate and agree that the  
8 facts alleged in the Complaint establish all elements necessary to sustain an  
9 action by the Commission pursuant to Section 532(a)(2)(A) of the Bankruptcy  
10 Code, 11 U.S.C. § 532(a)(2)(A), and that this Order shall have collateral  
11 estoppel effect for such purposes.

12 III.

13 RIGHT TO REOPEN

14 IT IS FURTHER ORDERED that:

15 A. Plaintiff's agreement to, and the Court's approval of, this Order,  
16 including, but not limited to, the suspension of the monetary judgment against  
17 Stipulating Defendants, is expressly premised upon the truthfulness, accuracy,  
18 and completeness of Stipulating Defendants' representations regarding their  
19 financial conditions, as set forth in the Individual and Corporate Financial  
20 disclosure forms ("Financial Statements") with attachments provided to the  
21 FTC on November 1, 2012, which contain material information upon which  
22 Plaintiff relied in negotiating and agreeing to the terms of this Order;

23 B. If, upon motion of the Commission, the Court finds that  
24 Stipulating Defendants failed to disclose any material asset, materially  
25 misrepresented the value of any asset, or made any other material  
26 misrepresentation in or omission from their Financial Statements or supporting  
27 documents, the suspended Judgment entered in Section II shall become  
28 immediately due and payable (less any amounts already paid),  
however, that, in all other respects, this Order shall remain in full force and



1 effect, unless otherwise ordered by the Court; and

2 C. Any proceedings instituted under this Section shall be in addition  
3 to, and not in lieu of, any other civil or criminal remedies that may be provided  
4 by law, including, but not limited to, contempt proceedings, or any other  
5 proceedings that the Commission or the United States might initiate to enforce  
6 this Order. For purposes of this Section, Stipulating Defendants waive any  
7 right to contest any of the allegations in the Commission's Complaint.

8 IV.

9 PROHIBITIONS REGARDING CONSUMER INFORMATION

10 IT IS FURTHER ORDERED that Stipulating Defendants, and their  
11 officers, agents, servants, employees, attorneys, and all other persons in active  
12 concert or participation with any of them who receive actual notice of this  
13 Order by personal service or otherwise, are permanently restrained and  
14 enjoined from:

15 A. Failing to provide sufficient customer information to enable the  
16 Commission to efficiently administer consumer redress. Stipulating  
17 Defendants represent that they have provided this redress information to the  
18 Commission. If a representative of the Commission requests in writing any  
19 information related to redress, Stipulating Defendants must provide it, in the  
20 form prescribed by the Commission, within fourteen (14) days;

21 B. Disclosing, using, or benefitting from customer information,  
22 including the name, address, telephone number, email address, social security  
23 number, other identifying information, or any data that enables access to a  
24 customer's account (including a credit card, bank account, or other financial  
25 account), of any person which any Stipulating Defendant obtained prior to  
26 entry of this Order in connection with the marketing or sale of any Debt Relief  
27 Product or Service; and

28 C. Failing to dispose of such customer information in all forms in  
their possession, custody, or control within thirty (30) days after entry of this

1 Order. Disposal shall be by means that protect against unauthorized access to  
2 the customer information, such as by burning, pulverizing, or shredding any  
3 papers, and by erasing or destroying any electronic media, to ensure that the  
4 customer information cannot practicably be read or reconstructed.

5           Provided, however, that customer information need not be disposed of,  
6 and may be disclosed, to the extent requested by a government agency or

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VI.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Stipulating Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Stipulating Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Stipulating Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Stipulating Defendant; (b) identify all of that Stipulating Defendant’s businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Stipulating Defendant Justin Journey must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Stipulating Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, Stipulating Defendant Justin Journey must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years following entry of this Order, each Stipulating

1 Defendant must submit a compliance notice, sworn under penalty of perjury,  
2 within 14 days of any change in the following:

3 1. Each Stipulating Defendant must report any change in: (a)  
4 any designated point of contact; or (b) the structure of any Corporate  
5 Defendant or any entity that Stipulating Defendant has any ownership  
6 interest in or directly or indirectly controls that may affect compliance  
7 obligations arising under this Order, including: creation, merger, sale, or  
8 dissolution of the entity or any subsidiary, parent, or affiliate that  
9 engages in any acts or practices subject to this Order.

10 2. Additionally, Stipulating Defendant Justin Journey must  
11 report any change in: (a) name, including aliases or fictitious name, or  
12 residence address; or (b) title or role in any business activity, including  
13 any business for which he performs services whether as an employee or  
14 otherwise and any entity in which he has any ownership interest, and  
15 identify its name, physical address, and Internet address, if any.

16 C. Each Stipulating Defendant must submit to the Commission  
17 notice of the filing of any bankruptcy petition, insolvency proceeding, or any  
18 similar proceeding by or against such Stipulating Defendant within 14 days of  
19 its filing.

20 D. Any submission to the Commission required by this Order to be  
21 sworn under penalty of perjury must be true and accurate and comply with 28  
22 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury  
23 under the laws of the United States of America that the foregoing is true and  
24 correct. Executed on: \_\_\_\_\_" and supplying the date, signatory's full name,  
25 title (if applicable), and signature.

26 E. Unless otherwise directed by a Commission representative in  
27 writing, all submissions to the Commission pursuant to this Order must be  
28 emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal  
Service) to: Associate Director for Enforcement, Bureau of Consumer

1 Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,  
2 Washington, DC 20580. The subject line must begin: FTC v. ELH  
3 Consulting, LLC, et al. (FTC Matter No. X130004).

4 VII.

5 RECORDKEEPING

6 IT IS FURTHER ORDERED that Stipulating Defendants must create  
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1 interviews, conferences, pretrial discovery, review of documents, and for such  
2 other matters as may be reasonably requested by the FTC. If requested in  
3 writing by the FTC, Stipulating Defendants shall appear, or cause their officers,  
4 employees, representatives, or agents to appear, and provide truthful testimony  
5 in any trial, deposition, or other proceeding related to or associated with the  
6 transactions or the occurrences that are the subject of the Complaint, without  
7 the service of a subpoena.

8 X.

9 DISSOLUTION OF ASSET FREEZE

10 IT IS FURTHER ORDERED that the freeze on the assets of  
11 Stipulating Defendants pursuant to the Stipulated Preliminary Injunction  
12 entered in this action shall be lifted permanently. A financial institution shall  
13 be entitled to rely upon a letter from Plaintiff stating that the freeze on  
14 Stipulating Defendants' assets has been lifted.

15 XI.

16 SEVERABILITY

17 IT IS FURTHER ORDERED that the provisions of this Order are  
18 separate and severable from one another. If any provision is stayed or  
19 determined to be invalid, the remaining provisions shall remain in full force  
20 and effect.

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XII.

JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.

DATED this 11<sup>th</sup> day of June, 2013.

