

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**PINNACLE PAYMENT SERVICES,
LLC, et al.,**

Defendants.

Case No. 1:13-cv-03455-TCB

**DEFAULT JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AS TO DEFENDANT
TOBIAS BOYLAND**

Plaintiff Federal Trade Commission (“FTC”) commenced this action on October 21, 2013, filing its Complaint pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l, seeking temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, 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 FDCPA, 15 U.S.C. §§ 1692-1692p, in connection with the collection of purported debt. (Dkt. No.1.) On December 16, 2013, the FTC filed its Amended Complaint, adding additional parties, including Tobias Boyland (also known as Lawrence Johnson) as defendants. (Dkt. No. 72.)

3. This Court has jurisdiction over the subject matter of this action and has jurisdiction over Defendant Boyland. Venue in the Northern District of Georgia is proper, and the Complaint states a claim upon which relief may be granted against Defendant Boyland under Section 13(b) of the FTC Act and Section 814 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l.

4. The activities of Defendant Boyland, as alleged in the Complaint, were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44. Defendants are “debt collectors” collecting “debts,” as those terms are defined in Sections 803(6) and 803(5) of the FDCPA, 15 U.S.C. §§ 1692a(6) and (5).

5. Process and service of process as to Defendant Boyland is proper.

6. Defendant Boyland is not an infant or an incompetent or in military service or otherwise exempted under the Soldiers’ and Sailors’ Civil Relief Act of 1940.

7. Defendant Boyland failed to answer or otherwise file any response to the Complaint. Accordingly, Defendant Boyland is in default for failure to plead or otherwise defend in this action.

8. Since at least 2009, Defendants, acting in common enterprise, operated a multi-million dollar debt collection scheme that successfully swindled over \$9 million dollars from unsuspecting and terrified consumers. Defendants contacted consumers and third parties falsely claiming that a lawsuit had been filed against the consumer. When consumers tried to learn more about the purported lawsuits,

Defendants' collectors threatened consumers with arrest or other legal action if they did not send funds for a purported payday loan or other debt. In fact, either consumers did not owe any debt or, in situations where consumers did have an outstanding debt, Defendants had no authority to collect that debt. In either case, Defendants merely pocketed the money they collected from intimidated consumers.

9. As alleged in Counts I and V.a., V.b., V.c., and V.d. of the Amended Complaint, in numerous instances, Defendants used false and misleading representations to collect debts, including claiming that consumers were delinquent on a payday loan or other debt that Defendants had authority to collection; consumers had a legal obligation to pay Defendants; consumers would be arrested for failing to pay; and Defendants had filed or would file legal action against consumers. These misleading representations were likely to mislead consumers acting reasonably under the circumstances. Therefore, Defendants' practices constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). In making these representations, Defendants also (a) misrepresented the character, amount, or legal status of a debt in violation of and Section 807(2)(A) of the FDCPA, 15 U.S.C. § 1692e(2)(A); (b) misrepresented that nonpayment of a debt would result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any

person in violation of and Section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4); (c)
threatened to take any action that

13. As alleged in Count V.f. of the Amended Complaint, in numerous instances, Defendants used business, company, or organization names other than their true names in violation of Section 807(14) of the FDCPA, 15 U.S.C. § 1692e(14).

14. As alleged in Count II of the Amended Complaint, in numerous instances, Defendants called consumers at places they knew, or should have known, were inconvenient, or at work when they knew, or should have known, that consumers were not allowed to receive such calls in violation of Section 805(a) of the FDCPA, 15 U.S.C. §1692c(a).

15. As alleged in Count IV.a. of the Amended Complaint, in numerous instances, Defendants repeatedly called consumers as a means of intimidating or harassing them into paying purported debts in violation of Section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5).

16. As alleged in Count VI of the Amended Complaint, in numerous instances, Defendants failed to provide consumers with required validation notices in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a).

17. Defendant Boyland is the *de facto* principal and manager of the Corporate Defendants. He is listed as a principal, manager, agent, or owner of Defendant Nationwide Payment Processors, and a signatory for its deposit accounts. He is the registrant for Defendants' website, pinnacle-payment.com. Defendant Boyland formulated, directed, controlled, had the authority to control, or participated in

Defendants' unlawful debt collection practices, including the acts and practices that constituted the common enterprise.

18. Defendants have caused consumer injury in the amount of at least \$9,384,628.

19.

Boyland from making certain misrepresentations concerning any financial-related product or service, including misrepresenting any material fact in connection with the advertising, marketing, promotion, or sale of a financial-related product or service, such as the terms or rates available for a loan, or the savings a consumer will receive from purchasing a debt relief service; (c) prohibits Defendant Boyland from disclosing, using, or benefitting from previously obtained consumer information, such as consumers' names, addresses, telephone numbers, email addresses, social security numbers, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account); and (d) provides for monitoring by the FTC of Defendant Boyland's compliance with such a permanent injunction.

21. It is proper in this case to enter an equitable monetary judgment against Defendant Boyland for his viola Tc -0.(o)8(pe)4(r)4(i)9(n Ehf)4(i)9(naSn)8(4(ha)12(len4(c)4]T

22. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

23. The entry of this Order is in the public interest.

DEFINITIONS

1. “**Consumer**” means any person.
2. “**Credit repair services**” means using any instrumentality of interstate commerce or the mails to sell, provide,

or indirectly, debts owed or due or asserted to be owed or due another. The term also includes any creditor who, in the process of collecting its own debts, uses any name other than its own which would indicate that a third person is collecting or attempting to collect such debts. The term also include any person to the extent

any way alter the terms of payment or other terms of the mortgage, loan, debt, or obligation, including but not limited to, a reduction in the amount of interest, principal balance, monthly payments, or fees owed by a person to a secured or unsecured creditor or debt collector; (B) stop, prevent, or postpone any mortgage or deed of foreclosure sale for a person's dwelling, any other sale of collateral, any repossession of a person's dwelling or other collateral, or otherwise save a person's dwelling or other collateral from foreclosure or repossession; (C) obtain any forbearance or modification in the timing of payments from any secured or unsecured holder of any mortgage, loan, debt, or obligation; (D) negotiate, obtain, or arrange any extension of the period of time within which the person may (i) cure his or her default on the mortgage, loan, debt, or obligation, (ii) reinstate his or her mortgage, loan, debt, or obligation, (iii) redeem a dwelling or other collateral, or (iv) exercise any right to reinstate the mortgage, loan, debt, or obligation or redeem a dwelling or other collateral; (E) obtain any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling or other collateral; or (F) negotiate, obtain, or arrange (i) a short sale of a dwelling or other collateral, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of a mortgage, loan, debt, or obligation other than a sale to a third party that is not the secured or unsecured loan holder. The foregoing shall include any

manner of claimed assistance, including, but not limited to, auditing or examining a person's application for the mortgage, loan, debt, or obligation.

ORDER

BAN ON DEBT COLLECTION

other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any financial-related product or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

1. The terms or rates that are available for any loan or other extension of credit;
2. Any person's ability to improve or otherwise affect a consumer's credit record, credit history, or credit rating or ability to obtain credit;
3. That any person can improve any consumer's credit record, credit history, or credit rating by permanently removing negative information from the consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete;
4. Any aspect of any secured or unsecured debt relief product or service, including but not limited to, the amount of savings a consumer will receive from purchasing, using, or enrolling in such secured or unsecured debt relief product or service; the amount of time before which a consumer will receive

settlement of that consumer's debts; or the reduction or
cessation of collection calls;

5. That a consumer will receive legal representation;
6. That any particular outcome or result from a financial-related
product or service is guaranteed, assured, highly likely or
probable, or very likely or probable;
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CONSUMER INFORMATION

III. IT IS FURTHER ORDERED that Defendant Boyland and his officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from directly or indirectly:

- A. Failing to provide sufficient consumer information to enable the FTC to administer efficiently consumer redress. If a representative of the FTC requests in writing any information related to redress, Defendant Boyland must provide it, in the form prescribed by the FTC, within 14 days.
- B. Disclosing, using, or benefitting from consumer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank

with or without the right of survivorship, tenants by the entirety, and/or community property.

- B. In partial satisfaction of the judgment against Defendant Boyland, any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, or person, whether located within the United States or outside the United States, that holds, controls or maintains accounts or assets of, on behalf of, or for the benefit of, Defendant Boyland, whether real or personal, whether located within the United States or outside the United States, shall turn over such account or asset to the FTC or its designated agent within ten (10) business days of receiving notice of this Order by any means, including but not limited to via facsimile.
- C. In partial satisfaction of the judgment against Defendant Boyland, E*TRADE Securities, LLC shall, within ten (10) business days from receipt of a copy of this Order, liquidate all assets in account number xxxx8464 in the name of Tobias Boyland and transfer the proceeds of such liquidation, if any, to the FTC or its designated agent.

D.

xxxx7014 in the name of Tobias Boyland and transfer the proceeds of such liquidation, if any, to the FTC or its designated agent.

- E. In partial satisfaction of the judgment against Defendant Boyland, title to the real properties located at (1) 32 Ivy Street, Buffalo, New York, (2) 78 Ivy Street, Buffalo, New York, and (3) 45 Harvard Place, Buffalo, New York shall be transferred to the Receiver and shall be considered assets of the receivership estate.
- F. All money paid to the FTC pursuant to this Order may be deposited into a fund administered by the FTC or its designee to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress funds. If a representative of the FTC decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the FTC may apply any remaining money for such other equitable relief, including but not limited to consumer information remedies, as the FTC determines to be reasonably related to the practices alleged in the Amended Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as equitable disgorgement. Defendants have no right to challenge any

change in structure as set forth in the Section titled Compliance Reporting. In any other business, such as one in which Defendant Boyland is an employee without any ownership or control, he must deliver a copy of this Order to all principals and managers of the business before participating in conduct related to the subject matter

- B. For 20 years following entry of this Order, Defendant Boyland must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Defendant Boyland must report any change in: (a) any designated point of contact; or (b) the structure of any entity that he has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, Defendant Boyland must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, 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 identify its name, physical address, and Internet address, if any.
- C. Defendant Boyland must submit to the FTC notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against him within 14 days of its filing.

- D. Any submission to the FTC required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:_____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a FTC representative in writing, all submissions to the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Pinnacle Payment Service, et al.*, Matter Number X140002.

RECORDKEEPING

- VII. IT IS FURTHER ORDERED** that Defendant Boyland must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant Boyland for any business in which he, individually or collectively with any other Defendant, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and
- E. A copy of each advertisement or other marketing material.

COMPLIANCE MONITORING

VIII. IT IS FURTHER ORDERED that, for the purpose of monitoring

Defendant Boyland's compliance with this Order and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the FTC, Defendant Boyland must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for

inspection and copying. The FTC is also authorized to obtain discovery, without further leave of Court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the FTC is authorized to communicate directly with Defendant Boyland. Defendant Boyland must permit representatives of the FTC to interview any employee or other person affiliated with him who has agreed to such an interview. The person interviewed may have counsel present.

C. The FTC may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant Boyland or any individual or entity affiliated with Defendant Boyland, without the necessity of identification or prior notice. Nothing in this Order limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

ENTRY OF JUDGMENT

IX. IT IS ORDERED THAT

