

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

STIPULATED FINAL
ORDER FOR PERMANENT
INJUNCTION AND SETTLEMENT
OF CLAIMS AS TO THE
CORPORATE DEFENDANTS

Plaintiff, Federal Trade Commission (“FTC”), commenced this civil action on October 21, 2013, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 814(a) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l(a). On motion by the FTC, on October 21, 2013, this Court entered an *ex parte* temporary restraining order (“TRO”) with asset freeze, appointment of receiver, and other equitable relief (Dkt. No. 7) against Defendants Pinnacle Payment Services, LLC, Velocity Payment Solutions, LLC, Heritage Capital Services, LLC, Performance Payment Processing, LLC, Credit Source Plus, LLC (an Ohio company), Credit Source Plus, LLC (a Georgia company), Reliable Resolution, LLC, Premium Express Processing, LLC (an Ohio company), Premium Express Processing, LLC (a Georgia company), Lisa J. Jeter, Hope V. Wilson, Nichole C. Anderson, Angela J.

Triplett, and DeMarra J. Massey. On November 4, 2013, after a hearing on an order to show cause, the Court entered a preliminary injunction (Dkt. No. 40) against Defendants. On December 16, 2013, the FTC filed its amended complaint (“First Amended Complaint”) (Dkt. No. 72) adding as defendants Tobias Boyland, Dorian Wills, Capitol Exchange, LLC, Global Acceptance, LLC, Freestar World, LLC, Heritage Management Services, LLC, Nationwide Payment Processors, LLC, National Processors Group, LLC, Pioneer Capital Services, LLC, Platium Express, LLC, Rapid Resolution, LLC, Solution Processing, LLC, and Windfall Management Systems, LLC. On February 5, 2014, after a hearing on an order to show cause, the Court entered a preliminary injunction (Dkt. No. 123) against the newly added Defendants.

Now, the FTC, the Receiver, and the Corporate Defendants, by and through their undersigned counsel, have stipulated and agreed to entry of this Final Order for Permanent Injunction and Settlement of Claims to resolve all matters in dispute in this action between them. The Receiver is entering into this Order on behalf of the Corporate Defendants based upon the powers granted to him under the Preliminary Injunctions. The Receiver notes that the Corporate Defendants are not currently represented by counsel.

FINDINGS

By stipulation of the parties, the Court finds as follows:

1. This is an action by the FTC instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 814(a) of the FDCPA, 15 U.S.C. § 1692l(a). The First Amended Complaint seeks both permanent injunctive relief and equitable monetary relief for the Corporate Defendants' alleged deceptive acts or practices as alleged therein.
2. The FTC has the authority under Section 13(b) of the FTC Act and Section 814(a) of the FDCPA to seek the relief it has requested, and the First Amended Complaint states a claim upon which relief can be granted against the Corporate Defendants.
3. This Court has jurisdiction over the subject matter of this case and has

3.

6. The Corporate Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. The Corporate Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. The FTC and the Corporate Defendants each shall bear its own costs and attorneys' fees.
7. The Receiver is authorized pursuant to Sections IX.L and IX.M of the Preliminary Injunctions to enter into this Order on behalf of the Corporate Defendants.
8. 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.
9. Entry of this Order is in the public interest.

DEFINITIONS

1. "Consumer" means any person.
2. "Corporate Defendants" means Pinnacle Payment Services, LLC, Velocity Payment Solutions, LLC, Heritage Capital Services, LLC, Performance Payment Processing, LLC, Credit Source Plus, LLC (an Ohio company), Credit Source Plus, LLC (a Georgia company), Reliable Resolution, LLC, Premium Express Processing, LLC (an Ohio company), Premium Express

Processing, LLC (a Georgia company), Capitol Exchange, LLC, Global Acceptance, LLC, Freestar World, LLC, Heritage Management Services, LLC, Nationwide Payment Processors, LLC, National Processors Group, LLC, Pioneer Capital Services, LLC, Platium Express, LLC, Rapid Resolution, LLC, Solution Processing, LLC, Windfall Management Systems, LLC,

6. “Debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly 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 such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt.

7. “Defendants’ means Pinnacle Payment Services, LLC, Velocity Payment Solutions, LLC, Heritage Capital Services, LLC, Performance Payment Processing, LLC, Credit Source Plus, LLC (an Ohio company), Credit Source Plus, LLC (a Georgia company), Reliable Resolution, LLC, Premium Express Processing, LLC (an Ohio company), Premium Express Processing, LLC (a Georgia company), Capitol Exchange, LLC, Global Acceptance, LLC, Freestar World, LLC, Heritage Management Services, LLC, Nationwide Payment Processors, LLC, National Processors Group, LLC, Pioneer Capital Services, LLC, Platium Express, LLC, Rapid Resolution, LLC, Solution Processing, LLC, Windfall Management Systems, LLC,

Tobias Boyland, Dorian Wills, .Lisa J. Jeter, Hope V. Wilson, Nichole C. Anderson, Angela J. Triplett, and DeMarra J. Massey.

8. “Financial-related product or service” means any product, service, plan, or program represented, expressly or by implication, to:
 - A. provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, an extension of consumer credit;
 - B. provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit repair services;
 - C. provide to any consumer, arrange for any consumer to receive, or assist any consumer in receiving, any secured or unsecured debt relief product or service;
9. “Person” means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.
10. “Preliminary Injunctions” means the preliminary injunction entered by the Court in this matter on November 4, 2013 (Dkt. No. 40) and the preliminary injunction entered by the Court in this matter on February 5, 2014 (Dkt. No. 123)
11. “Receivership Entities” means the Corporate Defendants, and any successors, assigns, affiliates, and subsidiaries that conduct any business

related to the Defendants' debt collection business and that the Receiver has reason to believe are owned or controlled in whole or in part by any Defendant.

12. "Secured or unsecured debt relief product or service" means, with respect to any mortgage, loan, debt, or obligation between a person and one or more secured or unsecured creditors or debt collectors, any product, service, plan, or program represented, expressly or by implication, to (A) negotiate, settle, or in any way alter the terms of payment or other terms

(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 oth2(ti)9(o)8(ne)4(e)4(

offering for sale, or selling, of any portfolio of consumer or commercial debt or any program that gathers, organizes, or stores consumer information relating to a debt or debt collection activities.

PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL RELATED PRODUCTS OR SERVICES

- II. IT IS FURTHER ORDERED that the Corporate Defendants and their 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, 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;

Corporate Defendants 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 account, or other financial account) of any person that any Defendant obtained prior to entry of this Order in connection with the collection or attempted collection of any debt.
- C. Failing to destroy such consumer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the FTC.
- D. Provided, however, that consumer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

MONETARY JUDGMENT

IV. IT IS FURTHER ORDERED that:

- A. Judgment in the amount of NINE MILLION, THREE HUNDRED EIGHTY FOUR THOUSAND, SIX HUNDRED TWENTY EIGHT DOLLARS (\$9,384,628) is entered in favor of the FTC against the

Corporate Defendants, jointly and severally, with post-judgment interest at the legal rate, for equitable monetary relief, including but not limited to consumer redress, and for paying any attendant expenses of administering any redress fund. The monetary judgment set forth in this Section IV is enforceable against any asset, real or personal, whether located within the United States or outside the United States, owned jointly by, on behalf of, for the benefit of, or in trust by or for, any Corporate Defendant, whether held as tenants in common, joint tenants with or without the right of survivorship, tenants by the entirety, and/or community property

- B. In partial satisfaction of the judgment against the Corporate Defendants, 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, any Receivership Entity, whether real or personal, whether located within the United States or outside the United States, shall turn over such account or asset to the Receiver 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.

523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

- I. Pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning the Corporate Defendants to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

CONTINUATION OF RECEIVERSHIP

- V. IT IS FURTHER ORDERED that Michael Fuqua shall continue as a permanent receiver over the Receivership Entities with full powers of a permanent receiver, including but not limited to those powers set forth in the Preliminary Injunctions, and including full liquidation powers. The Receiver is directed to wind up the Receivership Entities and liquidate all assets within 365 days after entry of this Order, but any party or the Receiver may request that the Court extend the Receiver's term for good cause. Upon termination of the receivership and final payment to the Receiver of all approved fees, costs, and expenses, the Receiver shall turn over to the FTC or its designated agent all remaining assets in the receivership estate.

ORDER ACKNOWLEDGMENTS

- VI. IT IS FURTHER ORDERED that the Corporate Defendants obtain acknowledgments of receipt of this Order:
- A. Each Corporate Defendant, within 7 days of entry of this Order, must submit to the FTC an acknowledgment of receipt of this Order sworn under penalty of perjury.
 - B. For 5 years after entry of this Order, each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.
 - C. From each individual or entity to which a Corporate Defendant delivered a copy of this Order, the Corporate Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

COMPLIANCE REPORTING

VII. IT IS FURTHER ORDERED that the Corporate Defendants make timely submissions to the FTC:

- A. One year after entry of this Order, each Corporate Defendant must submit a compliance report, sworn under penalty of perjury. The Corporate Defendant must: (a) identify the primary physical, postal, and email and telephone number, as designated points of contact, which representatives of the FTC may use to communicate with the Corporate Defendant; (b) identify all of the Corporate 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; (d) describe in detail whether and how the Corporate 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 FTC;
- B. For 20 years following entry of this Order, each Corporate Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following. The Corporate

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 Services et al, Matter Number X140002.

RECORDKEEPING

VIII. IT IS FURTHER ORDERED that the Corporate Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, each Corporate Defendant must maintain the following a

- B. For matters concerning this Order, the FTC is authorized to communicate directly with the Corporate Defendants. The Corporate Defendants must permit representatives of the FTC to interview any employee or other person affiliated with a Corporate Defendant 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 the Corporate Defendants or any individual or entity affiliated with the Corporate Defendants, 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

- X. **IT IS FURTHER ORDERED** that there is no just reason for delay of entry of this judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk immediately shall enter this Order as a final judgment as to each Corporate Defendant.

RETENTION OF JURISDICTION

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

SO ORDERED, this 21st day of July 2014.

A handwritten signature in red ink is written over a redacted area. The signature appears to be "Vincent P. ...". The redaction is a solid black bar.