

**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 DEFENDANT
NICHOLE ANDERSON**

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.

Now, the FTC, the Receiver, and Defendant Nichole Anderson have stipulated and agreed to entry of this Final Order for Permanent Injunction and Settlement of Claims (“Order”) to resolve all matters in dispute in this action between them.

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 Complaint seeks both permanent injunctive relief and equitable monetary relief for the Stipulating Defendant’s 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 Complaint states a claim upon which relief can be granted against the Stipulating Defendant.
3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the Stipulating Defendant. Venue in the Northern District of Georgia is proper.
4. The activities of the Stipulating Defendant, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The Stipulating Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, the Stipulating Defendant admits the facts necessary to establish jurisdiction.
6. The Stipulating Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. The Stipulating Defendant also waives any claim that she 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 Stipulating Defendant each shall bear its own costs and attorneys' fees.

7. 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.
8. 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 perform any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of (i) improving any consumer’s credit record, credit history, or credit rating, or (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).
3. **“Debt”** means any obligation or alleged obligation to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.
4. **“Debt collection activities”** means any activities of a debt collector to collect or attempt to collect, directly or indirectly, a debt owed or due, or asserted to be owed or due, another.
5. **“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.

6. **“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.

7. **“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;
8. **“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.
9. **“Regulated depository institution”** means a national bank, a member bank of the Federal Reserve System, a bank insured by the Federal Deposit Insurance Corporation, a branch or agency of a foreign bank or commercial lending company owned or controlled by a foreign bank, a Federal or State savings association, a Federal credit union, or any other institution otherwise regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

10. **“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 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.

11. **“Stipulating Defendant”** means Nichole C. Anderson and by whatever names she might be known.

ORDER

BAN ON DEBT COLLECTION ACTIVITIES

- I. IT IS THEREFORE ORDERED** that the Stipulating Defendant, whether acting directly or through any other person, is permanently restrained and enjoined from:
 - A. Engaging in debt collection activities;
 - B. Assisting others engaged in debt collection activities; and
 - C. Advertising, marketing, promoting, offering for sale, or selling, or assisting others engaged in the advertising, marketing, promoting, 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.

Provided, that Section I.C. shall not prohibit the Stipulating Defendant from engaging in any activity involving or related to the advertising, marketing, promoting, offering for sale, or selling of any portfolio of consumer or commercial debt, if the Stipulating Defendant is the employee of a regulated depository institution and engages in the activity in the context of such employment. This proviso shall not be construed to limit the licensing or regulatory powers of any federal, state, or local government agency or other entity regulating depository institutions.

PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL RELATED PRODUCTS OR SERVICES

II. IT IS FURTHER ORDERED that the Stipulating Defendant and her 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;
 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;
 7. The nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be provided to the consumer; and
 8. Any other fact material to consumers concerning any financial-related product or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics; and
- B. Advertising or assisting others in advertising credit terms other than those terms that actually are or will be arranged or offered by a creditor or lender.

CONSUMER INFORMATION

III. IT IS FURTHER ORDERED that the Stipulating Defendant and her 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, the Stipulating 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 AND PARTIAL SUSPENSION

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 Stipulating Defendant as equitable monetary relief.
- B. In partial satisfaction of the judgment against the Stipulating Defendant, FirstMerit Bank N.A. shall, within ten (10) business days from receipt of a copy of this Order, transfer to the FTC or its designated agent the amount of \$3,000.
- C. Upon the asset transfers identified in this Section, the remainder of the judgment is suspended as to the Stipulating Defendant, subject to the Subsections below.
- D. The asset freeze is modified to permit the transfers identified in this Section. Upon completion of those transfers, the asset freeze as to the Stipulating Defendant is dissolved.

- E. The FTC's agreement to the suspension of the judgment against the Stipulating Defendant is expressly premised upon the truthfulness, accuracy, and completeness of the Stipulating Defendants' sworn financial statements and related documents (collectively, "financial statements") submitted to the FTC, namely the Financial Statement of Individual Defendant Nichole Anderson signed on November 14, 2013, including its attachments.
- F. The suspension of the judgment will be lifted as to the Stipulating Defendant if, upon motion by the FTC, the Court finds that the Stipulating Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial statements identified above.
- G. If the suspension of the judgment is lifted, the judgment shall become immediately due as to the Stipulating Defendant in the amount specified Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the First Amended Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

- H. 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 First 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 actions the FTC or its representatives may take pursuant to this Subsection.
- I. The Stipulating Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- J. The facts alleged in the First Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the FTC, including in a proceeding to enforce its rights to

any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

- K. The facts alleged in the First Amended Complaint establish all elements necessary to sustain an action by the FTC pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- L. The Stipulating Defendant acknowledges that her Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which the Stipulating Defendant previously submitted to the FTC, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
- M. 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 Stipulating Defendant to the FTC, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

COOPERATION

- V. **IT IS FURTHER ORDERED** that the Stipulating Defendant must fully cooperate with representatives of the FTC and the Receiver in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the First Amended Complaint. The Stipulating Defendant must provide truthful and complete information, evidence and testimony. The Stipulating Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that an FTC representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as an FTC representative may designate, without the service of a subpoena.

ORDER ACKNOWLEDGMENTS

- VI. **IT IS FURTHER ORDERED** that the Stipulating Defendant obtain acknowledgments of receipt of this Order:
- A. The Stipulating 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, the Stipulating Defendant for any business that the Stipulating Defendant, individually or collectively with any other Defendant, is the majority owner or directly or

indirectly controls, 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. In any other business, such as one in which the Stipulating Defendant is an employee without any ownership or control, the Stipulating Defendant must deliver a copy of this Order to all principals and managers of the business before participating in conduct related to the subject matter of this Order. 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 the Stipulating Defendant delivered a copy of this Order, the Stipulating 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 Stipulating Defendant make timely submissions to the FTC:

- A. One year after entry of this Order, the Stipulating Defendant must submit a compliance report, sworn under penalty of perjury.
1. The Stipulating 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 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 the Stipulating Defendants must describe if she knows or should know due to her own involvement); (d) describe in detail whether and how the 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 FTC;
 2. Additionally, the Stipulating Defendant must: (a) identify all telephone numbers and physical, postal, email, and Internet addresses, including all residences; (b) identify all business

activities, including any business for which the Stipulating Defendant performs services whether as an employee or otherwise and any entity in which the Stipulating Defendant has any ownership interest; and (c) describe in detail the Stipulating Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 10 years following entry of this Order, the Stipulating Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. The Stipulating Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any entity that the Stipulating Defendant 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, the Stipulating Defendant 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 the Stipulating Defendant performs services whether as an employee or otherwise and any entity in which the Stipulating Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

- C. The Stipulating Defendant must submit to the FTC notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against the Stipulating Defendant 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

VIII. IT IS FURTHER ORDERED that the Stipulating Defendant must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, the Stipulating Defendant for any business in which the Stipulating Defendant, individually or collectively with any other Defendants, 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

IX. IT IS FURTHER ORDERED that, for the purpose of monitoring the Stipulating Defendant's compliance with this Order, including the financial representations upon which part of the judgment was suspended 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, the Stipulating Defendant 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 the Stipulating Defendant. The Stipulating Defendant must permit representatives of the FTC to interview any employee or other person affiliated with the Stipulating 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 Stipulating Defendant or any individual or entity affiliated with the Stipulating Defendant, 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 Defendant Nichole Anderson.

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 8th day of August 2014.



TIMOTHY C. BATTEN, SR.
United States District Judge