

1 Michelle Chua (DC Bar 441990)
2 Bikram Bandy (DC Bar 480967)
3 Karen S. Hobbs (DC Bar 469817)
4 600 Pennsylvania Ave., NW, CC-8528
5 Washington, DC 20580
6 202-326-3248 (Chua); mchua@ftc.gov
7 202-326-2978 (Bandy); bbandy@ftc.gov
8 202-326-3587 (Hobbs); khobbs@ftc.gov

9 Attorneys for Plaintiff
10 Federal Trade Commission

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Federal Trade Commission,
14 Plaintiff,
15 v.
16 Electronic Payment Solutions of America,
17 Incorporated, et al.,
18 Defendants.

No. CV-17-02535-PHX-DJH

**[Proposed] STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
JUDGMENT AGAINST DEFENDANTS
DYNASTY MERCHANTS, LLC AND
NIKOLAS MIHILLI**

19 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its First
20 Amended Complaint (“Complaint”) for a permanent injunction and other equitable relief
21 in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC
22 Act”), 15 U.S.C. § 53(b), and the Telemarketing and Consumer Fraud and Abuse
23 Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 - 6108. The FTC and
24 Defendants Nikolas Mihilli and Dynasty Merchants, LLC (“Settling Defendants”)
25 stipulate to the entry of this Order (“Order”) to resolve all matters in dispute related to
26 this action between them.

27 THEREFORE, IT IS ORDERED as follows:

FINDINGS

- 28 1. This Court has jurisdiction over this matter.

1 advertising or marketing material, including but not limited to any telephone sales script;
2 or (ii) advertising or marketing services; (c) providing names of, or assisting in the
3 generation of, potential customers; (d) advising on, arranging for, or brokering consumer
4 payment processing services; or (e) establishing corporate entities.

5 5. “**Chargeback**” means a procedure whereby an issuing bank or other
6 financial institution charges all or part of an amount of a Person’s credit or debit card
7 transaction back to the Acquirer or merchant bank.

8 6. “**Corporate Defendant**” means Dynasty Merchants, LLC, also d/b/a
9 Dynasty Marketing, and each of its successors and assigns, collectively, or in any
10 combination.

11 7. “**Credit Card Laundering**” means:

12 (a) Presenting or depositing into, or causing or allowing another to
13 present or deposit into, the credit card system for payment, a Credit
14 Card Sales Draft generated by a transaction that is not the result of a
15 credit card transaction between the cardholder and the Merchant;

16 (b) Employing, soliciting, or otherwise causing or allowing a Merchant,
17 or an employee, representative, or agent of a Merchant, to present to
18 or deposit into the credit card system for payment, a Credit Card
19 Sales Draft generated by a transaction that is not the result of a credit
20 card transaction between the cardholder and the Merchant; or

21 (c) Obtaining access to the credit card system through the use of a
22 business relationship or an affiliation with a Merchant, when such
23 access is not authorized by the Merchant Account agreement or the
24 applicable credit card system.

25 8. “**Credit Card Sales Draft**” means any record or evidence of a credit card
26 transaction.

27 9. “**Independent Sales Organization**” or “**ISO**” means any Person or entity
28 that (a) enters into an agreement or contract with a Payment Processor, Acquirer or

1 financial institution to sell or market Payment Processing services to a Merchant; (b)
2 matches, arranges, or refers Merchants to a Payment Processor or Acquirer for Payment
3 Processing services, or that matches, arranges, or refers a Payment Processor or Acquirer
4 to Merchants for Payment Processing services; or (c) is registered as an ISO or merchant
5 service provider (“MSP”) with VISA, MasterCard, or any credit card association.

6 10. “**Individual Defendant**” means Nikolas Mihilli, individually.

7 11. “**Merchant**” means any Person or entity engaged in the sale or marketing
8 of any goods or services or a charitable contribution, including any Person who applies
9 for ISO or Payment Processing services.

10 12. “**Merchant Account**” means an account with an Acquirer that authorizes
11 and allows a Merchant to honor or accept credit cards, or to transmit or process for
12 payment credit card payments, for the purchase of goods or services or a charitable
13 contribution.

14 13. “**Money Now Funding**” or “**Money Now Funding Enterprise**” means the
15 entities and individuals named as defendants in *FTC v. Money Now Funding, LLC, et al.*,
16 CV 13-01583-PHX-ROS (D. Az. 2013), including Money Now Funding, LLC, Rose
17 Marketing, LLC, Green Merchant Funding, Nationwide Lending, DePaola Marketing,
18 LLC, Affiliate Marketing Group, LLC, Legal Doxs, LLC, US Doc Assist, LLC, Affinity
19 Technologies, LLC, Marketing Expert Solutions, LLC, Global Network Marketing, LLC,
20 Precise Payroll Services, LLC, Strategic Media Advertising, LLC, Lukeroy K. Rose,
21 Cordell Bess, Cynthia Miller, Solana DePaola, Jennifer Beckman, William D. Claspell,
22 Richard Frost, Dino Mitchell, Clinton Rackley, Lance Himes, Leary Darling, Donna F.
23 Duckett (dba D&D Marketing Solutions), Della Frost (dba ZoomDocs), Christopher
24 Grimes (dba Elite Marketing Strategies), Alannah M. Harre (dba National Marketing
25 Group), Ronald W. Hobbs (dba Ron Hobbs & Associates), Janine Lilly (dba Doc
26 Assistant), Michael McIntyre (dba McIntyre Marketing), Benny Montgomery (dba
27 Montgomery Marketing), Virginia Rios (dba V&R Marketing Solutions), and Kendrick
28 Thomas (dba KT Advertising), and any other entity owned or controlled by Lukeroy

1 Rose or Solana DePaola.

2 14. **“Payment Processing”** means providing a Person, directly or indirectly,
3 with the means used to charge or debit accounts through the use of any payment method
4 or mechanism, including, but not limited to, credit cards, debit cards, prepaid cards,
5 stored value cards, ACH Debits, and Remotely Created Payment Orders. Whether
6 accomplished through the use of software or otherwise, Payment Processing includes,
7 among other things: (a) reviewing and approving Merchant applications for payment
8 processing services; (b) providing the means to transmit sales transaction data from
9 Merchants to acquiring banks, Payment Processors, ISOs, or other financial institutions;
10 (c) clearing, settling, or distributing proceeds of sales transactions from acquiring banks
11 or financial institutions to Merchants; or (d) processing Chargebacks or returned
12 Remotely Created Payment Orders, checks or ACH Transactions.

13 15. **“Payment Processor”** means any Person providing Payment Processing
14 services in connection with another Person’s sale of goods or services, or in connection
15 with any charitable donation.

16 16. **“Person”** means any natural person or any entity, corporation, partnership,
17 or association of persons.

18 17. **“Remotely Created Payment Order”** or **“RCPO”** means a payment
19 instruction or order, whether created in electronic or paper format, drawn on a payor’s
20 account that is initiated or created by or on behalf of the payee, and which is deposited
21 into or cleared through the check clearing system. For purposes of this definition, an
22 account includes any financial account or credit or other arrangement that allows checks,
23 payment instructions, or orders to be drawn against it that are payable by, through, or at a
24 bank.

25 18. **“Sales Agent”** means a Person that matches, arranges, or refers Merchants
26 to a Payment Processor, ISO, Sales Agent, or Acquirer for ISO or Payment Processing
27 services. As such, a Sales Agent may be involved in recommending a particular ISO,
28 Payment Processor, or Acquirer to a Merchant, or in recommending a particular

1 Merchant to an ISO, Payment Processor, or Acquirer. For purposes of this definition, a
2 Sales Agent does not necessarily use the title “sales agent,” and includes Persons,
3 independent contractors, sales representatives, sub-agents, and sub-ISOs (however titled)
4 working for or under a Sales Agent’s office who refer Merchants to a Sales Agent or ISO
5 for Payment Processing services.

6 19. “**Settling Defendant**” or “**Settling Defendants**” means the Individual
7 Defendant and Corporate Defendant, individually, collectively, or in any combination.

8 20. “**Telemarketing**” means any plan, program, or campaign which is
9 conducted to induce the purchase of goods or services by use of one or more telephones,
10 and which involves a telephone call, whether or not covered by the TSR.

11 **I.**

12 **BAN AGAINST PAYMENT PROCESSING OR**
13 **ACTING AS AN ISO OR SALES AGENT**

14 IT IS ORDERED that Settling Defendants, and each of their successors and
15 assigns, are permanently restrained and enjoined from Payment Processing or acting as
16 an ISO or Sales Agent.

17 **II.**

18 **PROHIBITION AGAINST CREDIT CARD LAUNDERING**

19 IT IS FURTHER ORDERED that Settling Defendants, and each of their officers,
20 agents, employees and attorneys, and all others in active concert or participation with any
21 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
22 permanently restrained and enjoined from Credit Card Laundering.

23 **III.**

24 **BAN ON TELEMARKETING**

25 IT IS FURTHER ORDERED that Settling Defendants are permanently restrained
26 and enjoined from engaging in Telemarketing or assisting others to engage in
27 Telemarketing, whether directly or through an intermediary.

28 **IV.**

MONETARY JUDGMENT AND SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of five million seven hundred sixty-six thousand eight hundred sixty-eight dollars (\$5,766,868) is entered in favor of the Commission against Settling Defendants, jointly and severally, as equitable monetary relief. The judgment is suspended subject to the Subsections below.

B. The Commission’s agreement to the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of the Settling Defendants’ sworn financial statements and related documents (collectively, “financial representations”) submitted to the Commission, namely: (1) the Financial Statement of Individual Defendant signed on June 6, 2018, including the attachments; (2) the Financial Statement of Corporate Defendant, signed by Individual Defendant on June 20, 2018; (3) the email communication and attached photographs from Booker T. Evans to counsel for the FTC dated October 1, 2018; and (4) the sworn statement from Individual Defendant dated October 9, 2018.

C. The suspension of the judgment will be lifted as to any Settling Defendant if, upon motion by the Commission, the Court finds that such Settling 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 representations identified above.

D. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Settling Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

E. Settling Defendants relinquish 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.

F. The facts alleged in the Complaint will be taken as true, without further

1 proof, in any subsequent civil litigation by or on behalf of the Commission, including in a
2 proceeding to enforce its rights to any payment or monetary judgment pursuant to this
3 Order, such as a nondischargeability complaint in any bankruptcy case.

4 G. The facts alleged in the Complaint establish all elements necessary to
5 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy
6 Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for
7 such purposes.

8 H. Settling Defendants acknowledge that their Taxpayer Identification
9 Numbers (Social Security Numbers or Employer Identification Numbers), which Settling
10 Defendants must submit to the Commission, may be used for collecting and reporting on
11 any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

12 I. All money paid to the Commission pursuant to this Order may be deposited
13 into a fund administered by the Commission or its designee to be used for equitable
14 relief, including consumer redress and any attendant expenses for the administration of
15 any redress fund. If a representative of the Commission decides that direct redress to
16 consumers is wholly or partially impracticable or money remains after redress is
17 completed, the Commission may apply any remaining money for such other equitable
18 relief (including consumer information remedies) as it determines to be reasonably
19 related to Settling Defendants' practices alleged in the Complaint. Any money not used
20 for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Settling
21 Defendants have no right to challenge any actions the Commission or its representatives
22 may take pursuant to this Subsection.

23 **V.**

24 **CUSTOMER INFORMATION**

25 IT IS FURTHER ORDERED that Settling Defendants, and each of their officers,
26 agents, employees and attorneys, and all others in active concert or participation with any
27 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
28 permanently restrained and enjoined from:

1 A. Disclosing, using, or benefitting from customer information, including the
2 name, address, telephone number, email address, social security number, other
3 identifying information, or any data that enables access to a customer's account
4 (including a credit card, bank account, or other financial account), that Settling
5 Defendants obtained prior to entry of this Order in connection with the Money Now
6 Funding Enterprise; and

7 B. Failing to destroy such customer information in all forms in their
8 possession, custody, or control within thirty (30) days after entry of this Order.

9 Provided, however, that customer information need not be disposed of, and may
10 be disclosed, to the extent requested by a government agency or required by law,
11 regulation, or court order.

12 **VI.**
13 **COOPERATION**

14 IT IS FURTHER ORDERED that Settling Defendants must fully cooperate with
15 representatives of the Commission in this case and in any investigation related to or
16 associated with the transactions or the occurrences that are the subject of the Complaint.
17 Such Settling Defendants must provide truthful and complete information, evidence, and
18 testimony. Individual Defendant must appear and Corporate Defendant must cause its
19 officers, employees, representatives, or agents to appear for interviews, discovery,
20 hearings, trials, and any other proceedings that a Commission representative may
21 reasonably request upon 5 days written notice, or other reasonable notice, at such places
22 and times as a Commission representative may designate, without the service of a
23 subpoena.

24 **VII.**
25 **ORDER ACKNOWLEDGMENTS**

26 IT IS FURTHER ORDERED that Settling Defendants obtain acknowledgments of
27 receipt of this Order:

28 A. Each Settling Defendant, within 7 days of entry of this Order, must submit

1 to the Commission an acknowledgment of receipt of this Order sworn under penalty of
2 perjury.

3 B. For 20 years after entry of this Order, Individual Defendant for any
4 business that he, individually or collectively with any other defendant, is the majority
5 owner or controls directly or indirectly, and Corporate Defendant must deliver a copy of
6 this Order to: (1) all principals, officers, directors, and LLC members and managers; (2)
7 all employees having managerial responsibilities for conduct related to the subject matter
8 of the Order and all agents and representatives who participate in conduct related to the
9 subject matter of the Order; and (3) any business entity resulting from any change in
10 structure as set forth in the Section titled Compliance Reporting. Delivery must occur
11 within 7 days of entry of this Order for current personnel. For all others, delivery must
12 occur before they assume their responsibilities.

13 C. From each individual or entity to which a Settling Defendant delivered a
14 copy of this Order, that Settling Defendant must obtain, within 30 days, a signed and
15 dated acknowledgment of receipt of this Order.

16 VIII.

17 COMPLIANCE REPORTING

18 IT IS FURTHER ORDERED that Settling Defendants make timely submissions to
19 the Commission:

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

22 1. Each Settling Defendant must:

23 (a) Identify the primary physical, postal, and email address and
24 telephone number, as designated points of contact, which
25 representatives of the Commission may use to communicate
26 with the Settling Defendant;

27 (b) Identify all of that Settling Defendant's businesses by all of
28 their names, telephone numbers, and physical, postal, email

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and Internet addresses;

- (c) Describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant (which Individual Defendant must describe if he knows or should know due to his own involvement);
- (d) Describe in detail whether and how that Settling Defendant is in compliance with each Section of this Order; and
- (e) Provide a copy of each Order Acknowledgement obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, Individual Defendant must:

- (a) Identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;
- (b) Identify 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 after entry of this Order, each Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

- 1. Each Settling Defendant must report a change in:
 - (a) Any designated point of contact; or
 - (b) The structure of the Corporate Defendant or any entity that a Settling Defendant has any ownership interest in or controls

1 directly or indirectly that may affect compliance obligations
2 arising under this Order, including: creation, merger, sale, or
3 dissolution of the entity or any subsidiary, parent, or affiliate
4 that engages in any acts or practices subject to this Order.

5 2. Additionally, Individual Defendant must report any change in:

6 (a) Name, including aliases or fictitious name, or residence
7 address; or

8 (b) Title or role in any business activity, including any business
9 for which he performs services whether as an employee or
10 otherwise and any entity in which he has any ownership
11 interest, and identify the name, physical address, and any
12 Internet address of the business or entity.

13 C. Each Settling Defendant must submit to the Commission notice of the filing
14 of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against
15 such Settling Defendant within 14 days of its filing.

16 D. Any submission to the Commission required by this Order to be sworn
17 under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746,
18 such as by concluding: “I declare under penalty of perjury under the laws of the United
19 States of America that the foregoing is true and correct. Executed on:_____” and
20 supplying the date, signatory’s full name, title (if applicable), and signature.

21 E. Unless otherwise directed by a Commission representative in writing, all
22 submissions to the Commission pursuant to this Order must be emailed to
23 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate
24 Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission,
25 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin:
26 FTC v. Electronic Payment Solutions of America, Inc., et al., X170045.

27 **IX.**

28 **RECORDKEEPING**

1 IT IS FURTHER ORDERED that Settling Defendants must create certain records
2 for 20 years after entry of the Order, and retain each such record for 5 years.
3 Specifically, Corporate Defendant and Individual Defendant, for any business that such
4 Settling Defendant, individually or collectively with any other defendants, is a majority
5 owner or controls directly or indirectly, must create and maintain the following records:

6 A. Accounting records showing the revenues from all goods or services sold;

7 B. Personnel records showing, for each Person providing services, whether as
8 an employee or otherwise, that Person's: name, addresses, telephone numbers; job title or
9 position; dates of service; and, if applicable, the reason for termination;

10 C. Records of all consumer complaints, Chargebacks, and refund requests,
11 whether received directly or indirectly, such as through a third party, and any response;

12 D. All records necessary to demonstrate full compliance with each provision
13 of this Order, including all submissions to the Commission; and

14 E. A copy of each unique advertisement or other marketing material.

15 **X.**

16 **COMPLIANCE MONITORING**

17 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling
18 Defendants' compliance with this Order, including the financial representations upon
19 which the judgment was suspended:

20 A. Within 14 days of receipt of a written request from a representative of the
21 Commission, each Settling Defendant must: submit additional compliance reports or
22 other requested information, which must be sworn under penalty of perjury; appear for
23 depositions; and produce documents for inspection and copying. The Commission is also
24 authorized to obtain discovery, without further leave of court, using any of the procedures
25 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),
26 31, 33, 34, 36, 45, and 69.

27 B. For matters concerning this Order, the Commission is authorized to
28 communicate directly with each Settling Defendant. Settling Defendants must permit

1 representatives of the Commission to interview any employee or other Person affiliated
2 with any Settling Defendant who has agreed to such an interview. The Person
3 interviewed may have counsel present.

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

10 D. Upon written request from a representative of the Commission, any
11 consumer reporting agency must furnish consumer reports concerning Individual
12 Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §
13 1681b(a)(1).

14 **XI.**

15 **RETENTION OF JURISDICTION**

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

18 **SO ORDERED**, this ___ day of _____, 2018.

19
20
21 Honorable Diane J. Humetewa
22 United States District Judge
23
24
25
26
27
28

1 **SO STIPULATED AND AGREED:**

2 **FOR PLAINTIFF:**

3 **FEDERAL TRADE COMMISSION**

4
5 
6 _____

Dated: 12/11/18

7 Michelle Chua, Attorney
8 Bikram Bandy, Attorney
9 Karen S. Hobbs, Attorney
10 Federal Trade Commission
11 Washington, DC 20580
12 (202) 326-3248 (Chua)
13 (202) 326-2978 (Bandy)
14 (202) 326-3587 (Hobbs)
15 (202) 326-3395 (Fax)
16 mchua@ftc.gov
17 bbandy@ftc.gov
18 khobbs@ftc.gov

19 **FOR DEFENDANTS:**

20 **DEFENDANTS: Nikolas Mihilli and Dynasty Merchants, LLC**

21 
22 _____

Dated: 10/8/18

23 Booker T. Evans, Jr. (Counsel for
24 Dynasty Merchants, LLC
25 and Nikolas Mihilli)
26 1 East Washington Street, Suite 2300
27 Phoenix, AZ 85004-2555
28 (602) 798-5499 (direct), -5595 (fax)
evansb@ballardspahr.com

DEFENDANTS: DYNASTY MERCHANTS, LLC AND NIKOLAS MIHILLI



Dated: 10-8-18

Nikolas Mihilli, individually and as
an officer of Dynasty Merchants, LLC