IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

Federal Trade Commission,
Plaintiff,

vs.
Merchant Services Direct, LLC,
also d/b/a Sphyra, et al.,

Defendants.

Plaintiff Federal Trade Commission ("Commission" or “FTC”) and
Settling Defendants (Merchant Services Direct, LLC, also d/b/a Sphyra, and
Shane Hurley) agree to the entry of this Stipulated Order by this Court in
order to resolve all matters in dispute in this action between them.
THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. Defendants waive any claim that they might have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney’s fees.

3. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

4. Entry of this Stipulation and Order hereby resolves all claims alleged in the Complaint.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. “Card Payment Processing Goods or Services” means goods or services that allow the merchant to process electronic payments by accepting debit and credit card transactions. Card Payment Processing Goods or Services may include, among other things: the performance of any function of collecting, preparing, formatting, charging, or transmitting consumer bank or credit card account data for use in connection with the debiting, charging, or accessing of a consumer’s bank or credit card
account; monitoring, tracking, and reconciling payments, returns, and
chargebacks; providing pre-authorization, post-authorization, and refund
services to merchants; and disbursing funds receipts to merchants.

2. **“Clearly and prominently”** means as follows:

   A. In print communications, the disclosure shall be
      presented in a manner that stands out from the accompanying text, so that
      it is sufficiently prominent, because of its type size, contrast, location, or
      other characteristics, for an ordinary consumer to notice, read and
      comprehend it; and

   B. Regardless of the medium used to disseminate it, the
      disclosure shall be in understandable language, size, and syntax. Nothing
      contrary to, inconsistent with, or in mitigation of the disclosure shall be
      used in any communication.

3. **“Settling Defendants”** means Shane Hurley and Merchant
   Services Direct, LLC, also d/b/a Sphyra (“MSD”), and its successors and
   assigns, as well as any subsidiaries, and any fictitious business entities or
   business names created or used by this entity.

4. **“Merchant”** means a person, corporation, or any other entity
   that acts as a consumer by purchasing or leasing Card Payment Processing
   Goods or Services.
5. “Person” means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

6. “Sales Office Manager” means that person contractually appointed to manage a sales office that participates in conduct related to the subject matter of this Order.

STIPULATED ORDER

I.

IT IS THEREFORE ORDERED that Settling Defendants shall not, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or lease of any Card Payment Processing Goods or Services:

A. Misrepresent or assist others in misrepresenting, any material fact, including but not limited to:

1. Settling Defendants’ affiliation with the merchants’ current payment processors;

2. The savings any merchant will obtain if the merchant purchases Card Payment Processing Goods or Services from Settling Defendants;
3. The fees or rates merchants will be charged for any Card Payment Processing Goods or Services; and

4. That merchants who sign applications or leases with Settling Defendants for Card Payment Processing Goods or Services either are not contractually bound by their signatures or they can cancel at any time without penalty.

B. Conceal or fail to disclose, or assist others in concealing or failing to disclose, clearly and prominently, to any merchant any material fact, including, but not limited to, the following:

1. Costs, rates, charges, or fees any merchant will be required to pay; and

2. That merchants who sign applications, agreements, or leases are signing binding and non-cancellable contracts;

C. Alter, add, or delete any term relating to costs, rates, charges, or fees of any binding document, or assist others in altering, adding, or deleting such terms of any binding document previously signed by merchants, without obtaining a new signature from the merchant; and

D. Fail to furnish merchants, before submitting any application for processing, with a complete copy of each contract or other document requiring the merchants’ signatures.
E. Make any representation or assist others in making any representation about the fees, rates, costs, terms, savings, or benefits of any Card Payment Processing Goods or Services, unless, at the time such representation is made, Settling Defendants possess and rely upon a reasonable basis to substantiate that the representation is true.

II.

By separate document Plaintiff was assigned by Kyle Lawson Dove a promissory note dated July 8, 2013, from Defendant Merchant Services Direct, LLC. The FTC and Settling Defendants hereby stipulate that no payment is required under that Note and that entry of this Stipulated Order extinguishes all rights and liabilities under the Note.

III.

**IT IS FURTHER ORDERED** that Settling Defendants, whether acting directly or indirectly, in connection with any business where: (1) MSD or Shane Hurley are the majority owner of the business or directly or indirectly manages or controls the business; and (2) the business is engaged, directly or indirectly, in the advertising, marketing, promotion, offering for sale, sale, or lease of any Card Payment Processing Goods or Services, are prohibited from:
A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and sales agents comply with this Stipulated Order. Such steps shall include, the following:

1. Establishing and maintaining a procedure for receiving and responding to merchant complaints;

2. Ascertaining the number and nature of merchant complaints regarding transactions in which each employee or sales agent is involved;

3. Promptly investigating fully any merchant complaint received by any business to which this Section applies; and

4. Taking corrective action with respect to any sales agent or employee whom Settling Defendants determine is not complying with this Stipulated Order.

B. Before any merchant signs any contract with Settling Defendants, Settling Defendants’ sales agents shall provide the merchant with a separate document setting forth all fees, charges, and rates to be assessed or debited in connection with any contracts for Settling Defendants’ Card Payment Processing Goods or Services unless prohibited by the sponsoring bank or participating ISO.

IV.
IT IS FURTHER ORDERED that Settling Defendants obtain acknowledgments of receipt of this Order:

A. Each Settling Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, Shane Hurley, for any card payment processing business that he individually or collectively with any other defendant is the majority owner or controls directly or indirectly, and MSD, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all sales office managers 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 seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

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

A. One (1) year after entry of this Order, each Settling Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Settling Defendant; (b) identify all of that Settling Defendant’s card payment processing businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, Shane Hurley 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 Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
2. Additionally, Shane Hurley must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all card payment processing business activities, including any business for which he performs services whether as an employee or otherwise and any card payment processing 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 five (5) years after entry of this Order, each Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Each Settling Defendant must report any change in: (a) any designated point of contact; or (b) the structure of MSD or any card payment processing entity that Settling Defendant has any ownership interest in or controls directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity that engages, directly or indirectly, in any acts or practices subject to this Order;
2. Additionally, Shane Hurley must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any card payment processing business activity, including any card payment processing business for which he performs services, whether as an employee or otherwise, and any card payment processing entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Any submission to the Commission 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.

D. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission 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**

VI.

IT IS FURTHER ORDERED that Settling Defendants must create certain records for five (5) years after entry of the Order, and retain each such record for five (5) years. Specifically, MSD and Shane Hurley, for any card payment processing business that such Settling Defendant, individually or collectively, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. Accounting records showing the revenues from all Card Payment Processing Goods or Services sold;

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 disciplinary action or termination;

C. Records of all merchant or consumer complaints and refund and cancellation 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 Stipulated Order, including all submissions to the Commission; and

E. A copy of each unique contract, addendum to such contract, advertisement, training material, or other marketing material.

VII.

IT IS FURTHER ORDERED that, for the purpose of monitoring Settling Defendants’ compliance with this Stipulated Order, including the financial representations upon which the Commission relied in negotiating this Stipulated Order:

A. Within thirty (30) days of receipt of a written request from a representative of the Commission, each Settling 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 Commission 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, and 45; provided that, Settling Defendants, after attempting to resolve a dispute without court
action and for good cause shown, may file a motion with this Court seeking
and order for one or more of the protections set forth in Rule 26(c).

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

C. The Commission may use all other lawful means, including
posing, through its representatives as prospective customers, suppliers, or
other individuals or entities, to Settling Defendants or any individual or
entity affiliated with Defendants, without the necessity of identification or
prior notice. Nothing in this Order limits the Commission’s lawful use of
compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
VIII.

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

IT IS SO ORDERED this 25th day of November, 2014.

The Honorable Thomas O. Rice
United States District Judge

SO STIPULATED AND AGREED:

FOR DEFENDANTS:

SHANE HURLEY
Individually and as an Officer, Principal, and Member of Defendant Merchant Services Direct, LLC, d/b/a SPHYRA and Generation Y Investments, LLC

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