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 13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE EASTERN DISTRICT OF WASHINGTON**

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 16 Federal Trade Commission,
 17 Plaintiff,
 18 vs.
 19 Merchant Services Direct, LLC,
 20 also d/b/a Sphyra, *et al.*,
 21 Defendants.
 22

CASE NO. 13-CV-0279-TOR

STIPULATION AND ORDER

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

2 **FINDINGS**

- 3
- 4 1. This Court has jurisdiction over this matter.
- 5 2. Defendants waive any claim that they might have under the Equal
- 6 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution
- 7 of this action through the date of this Order, and agree to bear their
- 8 own costs and attorney's fees.
- 9
- 10 3. Defendants and the Commission waive all rights to appeal or
- 11 otherwise challenge or contest the validity of this Order.
- 12
- 13 4. Entry of this Stipulation and Order hereby resolves all claims
- 14 alleged in the Complaint.
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16 **DEFINITIONS**

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

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

6 A. In print communications, the disclosure shall be
7 presented in a manner that stands out from the accompanying text, so that
8 it is sufficiently prominent, because of its type size, contrast, location, or
9 other characteristics, for an ordinary consumer to notice, read and
10 comprehend it; and
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13 B. Regardless of the medium used to disseminate it, the
14 disclosure shall be in understandable language, size, and syntax. Nothing
15 contrary to, inconsistent with, or in mitigation of the disclosure shall be
16 used in any communication.
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19 3. **“Settling Defendants”** means Shane Hurley and Merchant
20 Services Direct, LLC, also d/b/a Sphyra (“MSD”), and its successors and
21 assigns, as well as any subsidiaries, and any fictitious business entities or
22 business names created or used by this entity.
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25 4. **“Merchant”** means a person, corporation, or any other entity
26 that acts as a consumer by purchasing or leasing Card Payment Processing
27 Goods or Services.
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1 3. The fees or rates merchants will be charged for any Card
2 Payment Processing Goods or Services; and

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4 4. That merchants who sign applications or leases with Settling
5 Defendants for Card Payment Processing Goods or Services
6 either are not contractually bound by their signatures or they
7 can cancel at any time without penalty.
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9 B. Conceal or fail to disclose, or assist others in concealing or failing
10 to disclose, clearly and prominently, to any merchant any material fact,
11 including, but not limited to, the following:
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13 1. Costs, rates, charges, or fees any merchant will be required to
14 pay; and

15 2. That merchants who sign applications, agreements, or leases
16 are signing binding and non-cancellable contracts;
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19 C. Alter, add, or delete any term relating to costs, rates, charges, or
20 fees of any binding document, or assist others in altering, adding, or
21 deleting such terms of any binding document previously signed by
22 merchants, without obtaining a new signature from the merchant; and
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25 D. Fail to furnish merchants, before submitting any application for
26 processing, with a complete copy of each contract or other document
27 requiring the merchants' signatures.
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1 E. Make any representation or assist others in making any
2 representation about the fees, rates, costs, terms, savings, or benefits of any
3 Card Payment Processing Goods or Services, unless, at the time such
4 representation is made, Settling Defendants possess and rely upon a
5 reasonable basis to substantiate that the representation is true.
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8 **II.**

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

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

3 Such steps shall include, the following:
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- 5 1. Establishing and maintaining a procedure for receiving and
6 responding to merchant complaints;
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- 8 2. Ascertaining the number and nature of merchant complaints
9 regarding transactions in which each employee or sales agent
10 is involved;
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- 12 3. Promptly investigating fully any merchant complaint
13 received by any business to which this Section applies; and
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- 15 4. Taking corrective action with respect to any sales agent or
16 employee whom Settling Defendants determine is not
17 complying with this Stipulated Order.
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19 B. Before any merchant signs any contract with Settling
20 Defendants, Settling Defendants' sales agents shall provide the merchant
21 with a separate document setting forth all fees, charges, and rates to be
22 assessed or debited in connection with any contracts for Settling
23 Defendants' Card Payment Processing Goods or Services unless prohibited
24 by the sponsoring bank or participating ISO.
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28 **IV.**

1 **IT IS FURTHER ORDERED** that Settling Defendants obtain
2 acknowledgments of receipt of this Order:

3 A. Each Settling Defendant, within seven (7) days of entry of this
4 Order, must submit to the Commission an acknowledgment of receipt of
5 this Order sworn under penalty of perjury.
6

7 B. For five (5) years after entry of this Order, Shane Hurley, for
8 any card payment processing business that he individually or collectively
9 with any other defendant is the majority owner or controls directly or
10 indirectly, and MSD, must deliver a copy of this Order to: (1) all
11 principals, officers, directors, and LLC managers and members; (2) all sales
12 office managers who participate in conduct related to the subject matter of
13 the Order; and (3) any business entity resulting from any change in
14 structure as set forth in the Section titled Compliance Reporting. Delivery
15 must occur within seven (7) days of entry of this Order for current
16 personnel. For all others, delivery must occur before they assume their
17 responsibilities.
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19 C. From each individual or entity to which a Settling Defendant
20 delivered a copy of this Order, that Settling Defendant must obtain, within
21 thirty (30) days, a signed and dated acknowledgment of receipt of this
22 Order.
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V.

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2 **IT IS FURTHER ORDERED** that Settling Defendants make timely
3 submissions to the Commission:
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5 A. One (1) year after entry of this Order, each Settling Defendant
6 must submit a compliance report, sworn under penalty of perjury.
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8 1. Each Defendant must: (a) identify the primary physical,
9 postal, and email address and telephone number, as designated
10 points of contact, which representatives of the Commission may
11 use to communicate with Settling Defendant; (b) identify all of
12 that Settling Defendant's card payment processing businesses by
13 all of their names, telephone numbers, and physical, postal,
14 email, and Internet addresses; (c) describe the activities of each
15 business, including the goods and services offered, the means of
16 advertising, marketing, and sales, Shane Hurley must describe if
17 he knows or should know due to his own involvement); (d)
18 describe in detail whether and how that Settling Defendant is in
19 compliance with each Section of this Order; and (e) provide a
20 copy of each Order Acknowledgment obtained pursuant to this
21 Order, unless previously submitted to the Commission.
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1 2. Additionally, Shane Hurley must: (a) identify all
2 telephone numbers and all physical, postal, email and Internet
3 addresses, including all residences; (b) identify all card payment
4 processing business activities, including any business for which
5 he performs services whether as an employee or otherwise and
6 any card payment processing entity in which he has any
7 ownership interest; and (c) describe in detail his involvement in
8 each such business, including title, role, responsibilities,
9 participation, authority, control, and any ownership.
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11 B. For five (5) years after entry of this Order, each Settling
12 Defendant must submit a compliance notice, sworn under penalty of
13 perjury, within fourteen (14) days of any change in the following:
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15 1. Each Settling Defendant must report any change in: (a)
16 any designated point of contact; or (b) the structure of MSD or
17 any card payment processing entity that Settling Defendant has
18 any ownership interest in or controls directly or indirectly
19 controls that may affect compliance obligations arising under
20 this Order, including: creation, merger, sale, or dissolution of the
21 entity that engages, directly or indirectly, in any acts or practices
22 subject to this Order;
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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**

1 **Avenue NW, Washington, DC 20580.** The subject line must begin: *FTC*
2 *v. Merchant Services Direct, LLC, et al.*, (FTC Matter No. X130053).
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4 **VI.**

5 **IT IS FURTHER ORDERED** that Settling Defendants must create
6 certain records for five (5) years after entry of the Order, and retain each
7 such record for five (5) years. Specifically, MSD and Shane Hurley, for
8 any card payment processing business that such Settling Defendant,
9 individually or collectively, is a majority owner or controls directly or
10 indirectly, must create and retain the following records:
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12 A. Accounting records showing the revenues from all Card
13 Payment Processing Goods or Services sold;
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15 B. Personnel records showing, for each person providing services,
16 whether as an employee or otherwise, that person's: name, addresses, and
17 telephone numbers; job title or position; dates of service; and, if applicable,
18 the reason for disciplinary action or termination;
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20 C. Records of all merchant or consumer complaints and refund and
21 cancellation requests, whether received directly or indirectly, such as
22 through a third party, and any response;
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1 D. All records necessary to demonstrate full compliance with each
2 provision of this Stipulated Order, including all submissions to the
3 Commission; and
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5 E. A copy of each unique contract, addendum to such contract,
6 advertisement, training material, or other marketing material.
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8 **VII.**

9 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
10 Settling Defendants' compliance with this Stipulated Order, including the
11 financial representations upon which the Commission relied in negotiating
12 this Stipulated Order:
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15 A. Within thirty (30) days of receipt of a written request from a
16 representative of the Commission, each Settling Defendant must: submit
17 additional compliance reports or other requested information, which must
18 be sworn under penalty of perjury; appear for depositions; and produce
19 documents for inspection and copying. The Commission is also authorized
20 to obtain discovery, without further leave of court, using any of the
21 procedures prescribed by Federal Rules of Civil Procedure 29, 30
22 (including telephonic depositions), 31, 33, 34, 36, and 45; *provided that*,
23 Settling Defendants, after attempting to resolve a dispute without court
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1 action and for good cause shown, may file a motion with this Court seeking
2 and order for one or more of the protections set forth in Rule 26(c).

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4 B. For matters concerning this Order, the Commission is authorized
5 to communicate directly with each Defendant. Defendant must permit
6 representatives of the Commission to interview any employee or other
7 person affiliated with any Defendant who has agreed to such an interview.
8 The person interviewed may have counsel present; and
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11 C. The Commission may use all other lawful means, including
12 posing, through its representatives as prospective customers, suppliers, or
13 other individuals or entities, to Settling Defendants or any individual or
14 entity affiliated with Defendants, without the necessity of identification or
15 prior notice. Nothing in this Order limits the Commission's lawful use of
16 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
17 U.S.C. §§ 49, 57b-1.
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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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