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

Federal Trade Commission,  
Plaintiff,  
vs.  
Money Now Funding, LLC, et al.,  
Defendants.

No. CV-13-01583-PHX-ROS

FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND  
EQUITABLE MONETARY JUDGMENT  
AS TO DEFENDANT CYNTHIA  
MILLER

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief (Doc. 3), subsequently amended by the First Amended Complaint for Permanent Injunction and Other Equitable Relief (Doc. 194) (as amended, the “Complaint”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) & 57b. The FTC subsequently filed a Motion for Default Judgment against Defendant Cynthia Miller, a/k/a Cynthia Metcalf (“Defendant Miller”) on all counts of the First Amended Complaint.

Defendant Miller was served with the Complaint in this action (Doc. 218), but has not opposed, defended, or answered the Complaint (Docs. 230 & 232). Furthermore, the Complaint is well pled and the relief sought in the Complaint is reflected in the proposed order submitted with the Motion. Having considered the Complaint, memorandum of law and exhibits, and other evidence filed in this matter, the Court granted the

1 Commission’s Motion for Default Judgment against Defendant Cynthia Miller (Doc. 356)  
2 and enters this final judgment and order.

3 **FINDINGS**

4 1. This is an action by the Commission instituted under Sections 13(b) and 19  
5 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Act, 15 U.S.C.  
6 §§ 6101-6108. The Commission has authority to seek the relief contained herein.

7 2. The Commission’s Complaint states a claim upon which relief may be  
8 granted under Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC’s trade regulation rule  
9 entitled “Disclosure Requirements and Prohibitions Concerning Business Opportunities”  
10 (“Business Opportunity Rule” or “Rule”), 16 C.F.R. Part 437, as amended, and the  
11 “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310.

12 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,  
13 1337(a), and 1345, 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

14 4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15  
15 U.S.C. § 53(b).

16 5. The activities of Defendant Miller as alleged in the Commission’s  
17 Complaint are in or affecting commerce, as “commerce” is defined in Section 4 of the  
18 FTC Act, 15 U.S.C. § 44.

19 6. By virtue of the Court’s decision regarding the FTC’s Motion for Default  
20 Judgment, Defendant Miller is liable for injunctive and equitable monetary relief for  
21 violations of Section 5(a) of the FTC Act, the Business Opportunity Rule, and the TSR.

22 7. Entry of this order is in the public interest.

23 **DEFINITIONS**

24 For the purpose of this Order, the following definitions shall apply.

- 25 1. **“Business Opportunity”** means a commercial arrangement in which:  
26 a) A Business Opportunity Seller solicits a prospective purchaser to  
27 enter into a New Business;  
28 b) The prospective purchaser makes a Required Payment; and

- 1                   c)     The Business Opportunity Seller, expressly or by implication, orally  
2                             or in writing, represents that the Seller or one or more Designated  
3                             Persons will:
- 4                             i.     Provide Locations for the use or operation of equipment,  
5                                     displays, vending machines, or similar devices, owned,  
6                                     leased, controlled, or paid for by the purchaser; or
- 7                             ii.    Provide Outlets, Accounts, or Customers, including, but not  
8                                     limited to, Internet outlets, accounts, or customers, for the  
9                                     purchaser’s goods or services; or
- 10                            iii.   Buy back any or all of the goods or services that the  
11                                    purchaser makes, produces, fabricates, grows, breeds,  
12                                    modifies, or provides, including but not limited to providing  
13                                    payment for such services as, for example, stuffing envelopes  
14                                    from the purchaser’s home.

15                   2.     **“Business Opportunity Rule”** means the FTC Rule entitled “Disclosure  
16 Requirements and Prohibitions Concerning Business Opportunities,” 16 C.F.R. Part 437,  
17 as amended.

18                   3.     **“Business Opportunity Seller”** means a Person who offers for sale or sells  
19 a business opportunity.

20                   4.     **“Corporate Defendants”** means Money Now Funding, LLC, a/k/a Money  
21 Now Funded, a/k/a Cash4Businesses, a/k/a CashFourBusinesses, a/k/a Green Merchant  
22 Funding, a/k/a Nationwide Lending, Rose Marketing, LLC, DePaola Marketing, LLC,  
23 Affiliate Marketing Group, LLC, Legal Doxs, LLC, a/k/a First Business, LLC, US Doc  
24 Assist, LLC, a/k/a First Business, LLC, Affinity Technologies, LLC, Marketing Expert  
25 Solutions, LLC, Strategic Media Advertising, LLC, Global Network Marketing, LLC,  
26 Precise Payroll Services, LLC, and their successors and assigns.

27                   5.     **“Defendants”** means the Individual Defendants and Corporate Defendants,  
28 individually, collectively, or in any combination.

1           6.       **“Designated Person”** means any Person, other than the Business  
2 Opportunity Seller, whose goods or services the Business Opportunity Seller suggests,  
3 recommends, or requires that the purchaser use in establishing or operating a New  
4 Business.

5           7.       **“Individual Defendants”** means Lukeroy K. Rose, a/k/a Luke Rose,  
6 Cordell Bess, Cynthia Miller, a/k/a Cynthia Metcalf, Solana DePaola, Jennifer Beckman,  
7 William D. Claspell, a/k/a Bill Claspell, Richard Frost, Dino Mitchell, Clinton Rackley,  
8 Lance Himes, a/k/a Lance R. Himes, a/k/a Raymond L. Himes, Leary Darling, Donna F.  
9 Duckett, also d/b/a D&D Marketing Solutions, Della Frost, also d/b/a Zoom Docs,  
10 Christopher Grimes, also d/b/a Elite Marketing Strategies, Alannah M. Harre, also d/b/a  
11 National Marketing Group, Ronald W. Hobbs, a/k/a Ron Hobbs, also d/b/a Ron Hobbs &  
12 Associates, Janine Lilly, also d/b/a Doc Assistant, Michael McIntyre, also d/b/a McIntyre  
13 Marketing, Benny Montgomery, also d/b/a Montgomery Marketing, Virginia Rios, also  
14 d/b/a V&R Marketing Solutions and Kendrick Thomas, also d/b/a KT Advertising.

15           8.       **“National Do Not Call Registry”** means the registry of telephone numbers  
16 maintained by the FTC, pursuant to the Telemarketing Sales Rule, 16 C.F.R.  
17 § 310.4(b)(1)(iii)(B), of Persons who do not wish to receive Outbound Telephone Calls to  
18 induce the purchase of goods or services.

19           9.       **“New Business”** means a business in which the prospective purchaser is  
20 not currently engaged, or a new line or type of business.

21           10.      **“Outbound Telephone Call”** means a telephone call initiated by a  
22 Telemarketer to induce the purchase of goods or services or to solicit a charitable  
23 contribution.

24           11.      **“Person”** means a natural person, organization, or other legal entity,  
25 including a corporation, partnership, proprietorship, association, cooperative, government  
26 or governmental subdivision or agency, or any other group or combination acting as an  
27 entity.

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1           12.    “**Provide Locations, Outlets, Accounts, or Customers**” means to furnish  
2 a prospective purchaser with existing or potential locations, outlets, accounts, or  
3 customers; requiring, recommending, or suggesting one or more locations or lead  
4 generation companies; providing a list of locator or lead generating companies; collecting  
5 a fee on behalf of one or more locators or lead generating companies; offering to furnish  
6 a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her  
7 own locations, outlets, accounts, or customers.

8           13.    “**Representatives**” means Defendant Miller’s officers, agents, employees,  
9 and attorneys, and all other Persons in active concert or participation with any of them,  
10 who receive actual notice of this Order.

11           14.    “**Required Payment**” means all consideration that the purchaser must pay  
12 to the Business Opportunity Seller or an affiliate, either by contract or by practical  
13 necessity, as a condition of obtaining or commencing operation of the Business  
14 Opportunity. Such payment may be made directly or indirectly through a third party.

15           15.    “**Telemarketer**” means any Person who, in connection with  
16 Telemarketing, initiates or receives telephone calls to or from a customer or donor.

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

20           17.    “**Telemarketing Seller**” means any Person who, in connection with a  
21 Telemarketing transaction, provides, offers to provide, or arranges for others to provide  
22 goods or services to a customer in exchange for consideration whether or not such Person  
23 is under the jurisdiction of the Commission.

24           18.    “**Telemarketing Sales Rule**” means the FTC Rule entitled “Telemarketing  
25 Sales Rule,” 16 C.F.R. Part 310.

26           19.    “**Work-at-home Opportunity**” means any good, service, plan, or program  
27 that is represented, expressly or by implication, to assist an individual in any manner to  
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1 | earn money while working from home or from locations other than the business premises  
2 | of the Defendants, whether or not a Business Opportunity.

3 | **ORDER**

4 | **I.**

5 | **Ban on Telemarketing**

6 | **IT IS ORDERED** Defendant Miller, whether acting directly or through an  
7 | intermediary, **is permanently restrained and enjoined from:**

8 | A. Engaging in Telemarketing; and

9 | B. Holding any ownership interest, share, or stock in any business, other than  
10 | a publicly traded company, that engages in Telemarketing.

11 | However, that this Section shall not prohibit Defendant Miller from responding by  
12 | telephone to consumer inquiries regarding the sale of goods or services, so long as  
13 | payment or authorization of payment is made only after a face-to-face meeting with the  
14 | consumer.

15 | **II.**

16 | **Ban on the Sale of Business or Work-at-home Opportunities**

17 | **IT IS FURTHER ORDERED** Defendant Miller, whether acting directly or  
18 | through an intermediary, **is permanently restrained and enjoined from:**

19 | A. Advertising, marketing, promoting, or offering for sale or assisting in the  
20 | advertising, marketing, promoting, or offering for sale of any (1) Business Opportunity,  
21 | (2) Work-at-home Opportunity, or (3) service to assist in the creation, advertising,  
22 | marketing, promotion, or operation of a Business Opportunity or Work-at-home  
23 | Opportunity, including, but not limited to, website development, advertising, marketing,  
24 | sale of leads or lead generation, social media promotion, search engine optimization,  
25 | training, and business establishment services; and

26 | B. Holding any ownership interest, share, or stock in any business, other than  
27 | a publicly traded company, that engages in or assists in advertising, marketing,  
28 | promoting, or offering for sale of any (1) Business Opportunity, (2) Work-at-home

1 Opportunity, or (3) service to assist in the creation, advertising, marketing, promotion, or  
2 operation of a Business Opportunity or Work-at-home Opportunity, including, but not  
3 limited to, website development, advertising, marketing, sale of leads or lead generation,  
4 social media promotion, search engine optimization, training, and business establishment  
5 services.

6 **III.**

7 **Prohibition Against Misrepresentations**

8 **IT IS FURTHER ORDERED** Defendant Miller and her Representatives,  
9 whether acting directly or indirectly, in connection with the advertising, marketing,  
10 promotion, offering for sale, or sale of any products or services other than those banned  
11 by Section I of this Order, are **permanently restrained and enjoined from**  
12 misrepresenting or assisting others in misrepresenting, expressly or by implication:

13 A. That Defendant Miller or any other Person offers, sells, or provides loans or  
14 cash advances;

15 B. The amount of income, earnings, or profits that a Person may or is likely to  
16 earn, or that other Persons have earned;

17 C. That Defendant Miller or any other Person will provide, locate, or obtain  
18 leads containing the names or contact information of Persons potentially interested in  
19 products or services Defendant Miller or any other Person purports to offer;

20 D. That Defendant Miller or any other Person will contact, sell, or provide  
21 services to businesses consumers refer;

22 E. The total cost to purchase, receive, or use any products or services; or

23 F. Any material aspect of the performance, efficacy, nature, or central  
24 characteristics of any product or service.

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**IV.**

**Monetary Judgment**

**IT IS FURTHER ORDERED:**

A. Judgment in the amount of seven million, three hundred seventy-five thousand, two hundred fifty-eight dollars and eighty-four cents (\$7,375,258.84) is entered in favor of the Commission against Defendant Miller as equitable monetary relief. Defendant Miller's liability for the judgment shall be joint and several with any and all other Defendants against whom the Court may enter judgment, jointly and severally, for equitable monetary relief.

B. All payments under this Order must be made by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

C. Defendant Miller's Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendant Miller must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

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



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V.

**Lifting of Asset Freeze**

**IT IS FURTHER ORDERED** the asset freeze set forth in the Preliminary Injunction Order (Doc. 229) entered by this Court on April 28, 2014 is dissolved as to Defendant Miller.

VI.

**Customer Information**

**IT IS FURTHER ORDERED** Defendant Miller and her Representatives, whether acting directly or indirectly, are **permanently restrained and enjoined from:**

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendant Miller must provide it, in the form prescribed by the Commission, within fourteen (14) days.

B. Disclosing, using, or benefitting from customer 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), that any Defendant obtained prior to entry of this Order; and

C. Failing to destroy such customer information in all forms in Defendant Miller's possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Commission.

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

VII.

**Cooperation**

**IT IS FURTHER ORDERED** Defendant Miller must fully cooperate with representatives of the Commission in this case and in any investigation related to or

1 associated with the transactions or the occurrences that are the subject of the Complaint.  
2 Defendant Miller must provide truthful and complete information, evidence, and  
3 testimony. Defendant Miller must appear for interviews, discovery, hearings, trials, and  
4 any other proceedings that a Commission representative may reasonably request upon  
5 five (5) days written notice, or other reasonable notice, at such places and times as a  
6 Commission representative may designate, without the service of a subpoena.

7 **VIII.**

8 **Order Acknowledgments**

9 **IT IS FURTHER ORDERED** Defendant Miller obtain acknowledgments of  
10 receipt of this Order as follows.

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

14 B. For five (5) years after entry of this Order, Defendant Miller, for any  
15 business that Defendant Miller is the majority owner or controls directly or indirectly,  
16 must deliver a copy of this Order to (1) all principals, officers, directors, and LLC  
17 managers and members; (2) all employees, agents, and representatives who participate in  
18 conduct related to the subject matter of the Order; and (3) any business entity resulting  
19 from any change in structure as set forth in the Section titled Compliance Reporting.  
20 Delivery must occur within seven (7) days of entry of this Order for current personnel.  
21 For all others, delivery must occur before they assume their responsibilities.

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

25 **IX.**

26 **Compliance Reporting**

27 **IT IS FURTHER ORDERED** Defendant Miller make timely submissions to the  
28 Commission as follows.

1           A.     One year after entry of this Order, Defendant Miller must submit a  
2 compliance report, sworn under penalty of perjury, which must:

- 3           1)     Identify all telephone numbers and all physical, postal, email and  
4                 Internet addresses, including all residences, and identify the primary  
5                 physical, postal, and email address and telephone number, as  
6                 designated points of contact, which representatives of the  
7                 Commission may use to communicate with Defendant Miller;
- 8           2)     Identify all business activities, including any business for which  
9                 Defendant Miller performs services whether as an employee or  
10                otherwise and any entity in which Defendant Miller has any  
11                ownership interest;
- 12          3)     Describe in detail Defendant Miller's involvement in each such  
13                business, including title, role, responsibilities, participation,  
14                authority, control, and any ownership;
- 15          4)     Identify all of Defendant Miller's businesses by all of their names,  
16                telephone numbers, and physical, postal, email, and Internet  
17                addresses;
- 18          5)     Describe the activities of each business, including the goods and  
19                services offered, the means of advertising, marketing, and sales, and  
20                the involvement of any other Defendant in the case of *FTC v. Money*  
21                *Now Funding* (which Defendant Miller must describe if she knows  
22                or should know due to her own involvement);
- 23          6)     Describe in detail whether and how Defendant Miller is in  
24                compliance with each Section of this Order; and
- 25          7)     Provide a copy of each Order Acknowledgment obtained pursuant to  
26                this Order, unless previously submitted to the Commission.

1           B.     For twenty (20) years after entry of this Order, Defendant Miller must  
2 submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of  
3 any change in the following:

- 4                   1)     Name, including aliases or fictitious names, or residence address;
- 5                   2)     Any designated point of contact;
- 6                   3)     Title or role in any business activity, including any business for  
7                         which Defendant Miller performs services whether as an employee  
8                         or otherwise and any entity in which Defendant Miller has any  
9                         ownership interest, and identify the name, physical address, and any  
10                        Internet address of the business or entity; and
- 11                  4)     The structure of any entity that Defendant Miller has any ownership  
12                         interest in or controls directly or indirectly that may affect  
13                         compliance obligations arising under this Order, including: creation,  
14                         merger, sale, or dissolution of the entity or any subsidiary, parent, or  
15                         affiliate that engages in any acts or practices subject to this Order.

16           C.     Defendant Miller must submit to the Commission notice of the filing of any  
17 bankruptcy petition, insolvency proceeding, or similar proceeding by or against  
18 Defendant Miller, within fourteen (14) days of its filing.

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

24           E.     Unless otherwise directed by a Commission representative in writing, all  
25 submissions to the Commission pursuant to this Order must be emailed to  
26 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

1 Associate Director for Enforcement  
2 Bureau of Consumer Protection  
3 Federal Trade Commission  
4 600 Pennsylvania Avenue NW  
5 Washington, DC 20580

6 The subject line must begin: FTC v. Cynthia Miller, X130063.

7 **X.**

8 **Recordkeeping**

9 **IT IS FURTHER ORDERED** Defendant Miller must create certain records for  
10 twenty (20) years after entry of the Order and retain each such record for five (5) years.  
11 Specifically, Defendant Miller, for any business that Defendant Miller is a majority owner  
12 or controls directly or indirectly, must create and retain the following records.

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

14 B. Personnel records showing, for each person providing services, whether as  
15 an employee or otherwise, that person's: name; addresses; telephone numbers; job title or  
16 position; dates of service; and (if applicable) the reason for termination;

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

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

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

22 **XI.**

23 **Compliance Monitoring**

24 **IT IS FURTHER ORDERED**, for the purpose of monitoring Defendant Miller's  
25 compliance with this Order, that:

26 A. Within 14 days of receipt of a written request from a representative of the  
27 Commission, Defendant Miller must submit additional compliance reports or other  
28 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

1 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),  
2 31, 33, 34, 36, 45, and 69.

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

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

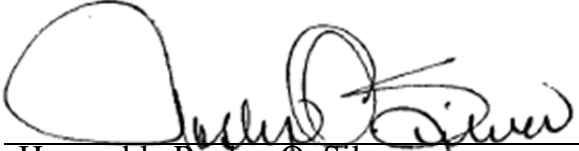
13 D. Upon written request from a representative of the Commission, any  
14 consumer reporting agency must furnish consumer reports concerning Defendant Miller,  
15 pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

16 **XII.**

17 **Retention of Jurisdiction**

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

20 Dated this 15th day of July, 2015.

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24 Honorable Roslyn O. Silver  
25 Senior United States District Judge  
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