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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 **CLINTON
RACKLEY**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief (Docket No. 3), subsequently amended by the First Amended Complaint for Permanent Injunction and Other Equitable Relief (Docket No. 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 Summary Judgment against Defendant Clinton Rackley (“Defendant Rackley”) on all counts of the First Amendment Complaint. For the reasons stated in a separate order (Docket No. 313), the Court granted the FTC’s Motion.

IT IS THEREFORE ORDERED as follows.

FINDINGS

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

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

6 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
7 1337(a), and 1345, 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

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

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

13 6. By virtue of the Court’s decision regarding the FTC’s Motion for Summary
14 Judgment, Defendant Rackley is liable for injunctive and equitable monetary relief for
15 violations of Section 5(a) of the FTC Act, the Business Opportunity Rule, and the TSR.

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

17 **DEFINITIONS**

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

- 19 1. **“Business Opportunity”** means a commercial arrangement in which:
- 20 a) A Business Opportunity Seller solicits a prospective purchaser to
21 enter into a New Business;
 - 22 b) The prospective purchaser makes a Required Payment; and
 - 23 c) The Business Opportunity Seller, expressly or by implication, orally
24 or in writing, represents that the Seller or one or more Designated
25 Persons will:
 - 26 i. Provide Locations for the use or operation of equipment,
27 displays, vending machines, or similar devices, owned,
28 leased, controlled, or paid for by the purchaser; or

- 1 ii. Provide Outlets, Accounts, or Customers, including, but not
2 limited to, Internet outlets, accounts, or customers, for the
3 purchaser’s goods or services; or
4 iii. Buy back any or all of the goods or services that the
5 purchaser makes, produces, fabricates, grows, breeds,
6 modifies, or provides, including but not limited to providing
7 payment for such services as, for example, stuffing envelopes
8 from the purchaser’s home.

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

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

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

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

23 6. **“Designated Person”** means any Person, other than the Business
24 Opportunity Seller, whose goods or services the Business Opportunity Seller suggests,
25 recommends, or requires that the purchaser use in establishing or operating a New
26 Business.

27 7. **“Individual Defendants”** means Lukeroy K. Rose, a/k/a Luke Rose,
28 Cordell Bess, Cynthia Miller, a/k/a Cynthia Metcalf, Solana DePaola, Jennifer Beckman,

1 William D. Claspell, a/k/a Bill Claspell, Richard Frost, Dino Mitchell, Clinton Rackley,
2 Lance Himes, a/k/a Lance R. Himes, a/k/a Raymond L. Himes, Leary Darling, Donna F.
3 Duckett, Della Frost, also d/b/a Zoom Docs, Christopher Grimes, also d/b/a Elite
4 Marketing Strategies, Alannah M. Harre, also d/b/a National Marketing Group, Ronald
5 W. Hobbs, a/k/a Ron Hobbs, also d/b/a Ron Hobbs & Associates, Janine Lilly, also d/b/a
6 Doc Assistant, Michael McIntyre, also d/b/a McIntyre Marketing, Benny Montgomery,
7 also d/b/a Montgomery Marketing, Virginia Rios, also d/b/a V&R Marketing Solutions
8 and Kendrick Thomas, also d/b/a KT Advertising.

9 8. “**National Do Not Call Registry**” means the registry of telephone numbers
10 maintained by the FTC, pursuant to the Telemarketing Sales Rule, 16 C.F.R.
11 § 310.4(b)(1)(iii)(B), of Persons who do not wish to receive Outbound Telephone Calls to
12 induce the purchase of goods or services.

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

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

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

22 12. “**Provide Locations, Outlets, Accounts or Customers**” means to furnish a
23 prospective purchaser with existing or potential locations, outlets, accounts, or customers;
24 requiring, recommending, or suggesting one or more locations or lead generation
25 companies; providing a list of locator or lead generating companies; collecting a fee on
26 behalf of one or more locators or lead generating companies; offering to furnish a list of
27 locations; or otherwise assisting the prospective purchaser in obtaining his or her own
28 locations, outlets, accounts, or customers.

1 13. “**Representatives**” means Defendant Rackley’s officers, agents, servants,
2 employees, and attorneys, and all other Persons in active concert or participation with any
3 of them, who receive actual notice of this Order.

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

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

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

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

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

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

23 **ORDER**

24 **I.**

25 **Ban on Telemarketing**

26 **IT IS ORDERED** Defendant Rackley, whether acting directly or through an
27 intermediary, **is permanently restrained and enjoined from:**

28 A. Engaging in Telemarketing; and

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

3 However, this Section shall not prohibit Defendant Rackley from responding by
4 telephone to consumer inquiries regarding the sale of goods or services, so long as
5 payment or authorization of payment is made only after a face-to-face meeting with the
6 consumer.

7 **II.**

8 **Ban on the Sale of Business or Work-at-Home Opportunities**

9 **IT IS FURTHER ORDERED** Defendant Rackley, whether acting directly or
10 through an intermediary, **is permanently restrained and enjoined from:**

11 A. Advertising, marketing, promoting, or offering for sale or assisting in the
12 advertising, marketing, promoting, or offering for sale of any (1) Business Opportunity,
13 (2) Work-at-home Opportunity, or (3) service to assist in the creation, advertising,
14 marketing, promotion, or operation of a Business Opportunity or Work-at-home
15 Opportunity, including, but not limited to, website development, advertising, marketing,
16 sale of leads or lead generation, social media promotion, search engine optimization,
17 training, and business establishment services; and

18 B. Holding any ownership interest, share, or stock in any business, other than
19 a publicly traded company, that engages in or assists in advertising, marketing,
20 promoting, or offering for sale of any (1) Business Opportunity, (2) Work-at-Home
21 Opportunity, or (3) service to assist in the creation, advertising, marketing, promotion, or
22 operation of a Business Opportunity or Work-at-Home Opportunity, including, but not
23 limited to, website development, advertising, marketing, sale of leads or lead generation,
24 social media promotion, search engine optimization, training, and business establishment
25 services.

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1 **III.**

2 **Prohibition Against Misrepresentations**

3 **IT IS ORDERED** Defendant Rackley and his Representatives, whether acting
4 directly or indirectly, in connection with the advertising, marketing, promotion, offering
5 for sale, or sale of any products or services other than those banned by Sections I or II of
6 this Order, are **permanently restrained and enjoined from** misrepresenting or assisting
7 others in misrepresenting, expressly or by implication:

8 A. That Defendant Rackley or any other Person offers, sells, or provides loans
9 or cash advances;

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

12 C. That Defendant Rackley or any other Person will provide, locate, or obtain
13 leads containing the names or contact information of Persons potentially interested in
14 products or services Defendant Rackley or any other Person purports to offer;

15 D. That Defendant Rackley or any other Person will contact, sell, or provide
16 services to businesses consumers refer;

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

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

20 **IV.**

21 **Monetary Judgment**

22 **IT IS FURTHER ORDERED** that:

23 A. Judgment in the amount of One Hundred Seventy-Nine Thousand, Nine
24 Hundred Seventy-Six Dollars and Fifty-Two Cents (\$179,976.52) is entered in favor of
25 the Commission against Defendant Rackley as equitable monetary relief.

26 B. All payments under this Order must be made by electronic fund transfer in
27 accordance with instructions provided by a representative of the Commission.
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1 C. In partial satisfaction of this judgment, the following assets held by third
2 parties shall be transferred to the Commission as follows:

3 1) Wells Fargo Bank, N.A. is ordered, within seven (7) days of entry of
4 this Order, to transfer the funds held in the following accounts to the
5 Commission by electronic fund transfer in accordance with
6 instructions provided by a representative of the Commission:

7 (1) Account No. xxx-xxx4318, held in the name of Clinton S.
8 Rackley; (2) Account No. xxx-xxx2197, held in the name of Clinton
9 S. Rackley; (3) Account No. xxx-xxx2243, held in the name of
10 Clinton S. Rackley; and (4) Account No. xxx-xxx6115, held in the
11 name of Clinton S. Rackley.

12 2) JPMorgan Chase Bank, N.A. is ordered, within seven (7) days of
13 entry of this Order, to transfer the funds held in account number
14 xxxxx1989, in the name of Clinton S. Rackley, to the Commission
15 by electronic fund transfer in accordance with instructions provided
16 by a representative of the Commission:

17 D. Defendant Rackley relinquishes dominion and all legal and equitable right,
18 title, and interest in all assets transferred pursuant to this Order and may not seek the
19 return of any assets.

20 E. Defendant Rackley acknowledges that his Taxpayer Identification Numbers
21 (Social Security Numbers or Employer Identification Numbers), which Defendant
22 Rackley previously submitted to the Commission, may be used for collecting and
23 reporting on any delinquent amount arising out of this Order, in accordance with 31
24 U.S.C. §7701.

25 F. All money paid to the Commission pursuant to this Order may be deposited
26 into a fund administered by the Commission or its designee to be used for equitable
27 relief, including consumer redress and any attendant expenses for the administration of
28 any redress fund. If a representative of the Commission decides that direct redress to

1 consumers is wholly or partially impracticable or money remains after redress is
2 completed, the Commission may apply any remaining money for such other equitable
3 relief (including consumer information remedies) as it determines to be reasonably
4 related to Defendants' practices alleged in the Complaint. Any money not used for such
5 equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendant
6 Rackley has no right to challenge any actions the Commission or its representatives may
7 take pursuant to this Subsection.

8 **V.**

9 **Lifting of Asset Freeze**

10 **IT IS FURTHER ORDERED** the asset freeze set forth in the Preliminary
11 Injunction Order (Doc. 95) entered by this Court on September 13, 2013, is modified to
12 permit the payments and transfers identified in Section IV of this Order. Upon
13 completion of all payments and transfers required by Section IV of this order, the asset
14 freeze as to Defendant Rackley is dissolved.

15 **VI.**

16 **Customer Information**

17 **IT IS FURTHER ORDERED** Defendant Rackley and his Representatives,
18 whether acting directly or indirectly, are **permanently restrained and enjoined from:**

- 19 A. Failing to provide sufficient customer information to enable the
20 Commission to efficiently administer consumer redress. If a representative of the
21 Commission requests in writing any information related to redress, Defendant Rackley
22 must provide it, in the form prescribed by the Commission, within fourteen (14) days.
- 23 B. Disclosing, using, or benefitting from customer information, including the
24 name, address, telephone number, email address, social security number, other identifying
25 information, or any data that enables access to a customer's account (including a credit
26 card, bank account, or other financial account), that any Defendant obtained prior to
27 entry of this Order; and

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

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

7 **VII.**

8 **Cooperation**

9 **IT IS FURTHER ORDERED** Defendant Rackley must fully cooperate with
10 representatives of the Commission in this case and in any investigation related to or
11 associated with the transactions or the occurrences that are the subject of the Complaint.
12 Defendant Rackley must provide truthful and complete information, evidence, and
13 testimony. Defendant Rackley must appear for interviews, discovery, hearings, trials, and
14 any other proceedings that a Commission representative may reasonably request upon
15 five (5) days written notice, or other reasonable notice, at such places and times as a
16 Commission representative may designate, without the service of a subpoena.

17 **VIII.**

18 **Order Acknowledgments**

19 **IT IS FURTHER ORDERED** that Defendant Rackley obtain acknowledgments
20 of receipt of this Order as follows.

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

24 B. For five (5) years after entry of this Order, Defendant Rackley, for any
25 business that Defendant Rackley is the majority owner or controls directly or indirectly,
26 must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC
27 managers and members; (2) all employees, agents, and representatives who participate in
28 conduct related to the subject matter of the Order; and (3) any business entity resulting

1 from any change in structure as set forth in the Section titled Compliance Reporting.
2 Delivery must occur within seven (7) days of entry of this Order for current personnel.
3 For all others, delivery must occur before they assume their responsibilities.

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

7 **IX.**

8 **Compliance Reporting**

9 **IT IS FURTHER ORDERED** Defendant Rackley make timely submissions to
10 the Commission as follows.

11 A. One year after entry of this Order, Defendant Rackley must submit a
12 compliance report, sworn under penalty of perjury, which must:

- 13 1) Identify all telephone numbers and all physical, postal, email and
14 Internet addresses, including all residences, and identify the primary
15 physical, postal, and email address and telephone number, as
16 designated points of contact, which representatives of the
17 Commission may use to communicate with Defendant Rackley;
- 18 2) Identify all business activities, including any business for which
19 Defendant Rackley performs services whether as an employee or
20 otherwise and any entity in which Defendant Rackley has any
21 ownership interest;
- 22 3) Describe in detail Defendant Rackley's involvement in each such
23 business, including title, role, responsibilities, participation,
24 authority, control, and any ownership;
- 25 4) Identify all of Defendant Rackley's businesses by all of their names,
26 telephone numbers, and physical, postal, email, and Internet
27 addresses;

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- 1 5) Describe the activities of each business, including the goods and
2 services offered, the means of advertising, marketing, and sales, and
3 the involvement of any other Defendant in the case of *FTC v. Money*
4 *Now Funding* (which Defendant Rackley must describe if he knows
5 or should know due to his own involvement);
- 6 6) Describe in detail whether and how Defendant Rackley is in
7 compliance with each Section of this Order; and
- 8 7) Provide a copy of each Order Acknowledgment obtained pursuant to
9 this Order, unless previously submitted to the Commission.

10 B. For twenty (20) years after entry of this Order, Defendant Rackley must
11 submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of
12 any change in the following.

- 13 1) Name, including aliases or fictitious name, or residence address;
- 14 2) Any designated point of contact;
- 15 3) Title or role in any business activity, including any business for
16 which Defendant Rackley performs services whether as an
17 employee or otherwise and any entity in which Defendant Rackley
18 has any ownership interest, and identify the name, physical address,
19 and any Internet address of the business or entity; and
- 20 4) The structure of any entity that Defendant Rackley has any
21 ownership interest in or controls directly or indirectly that may affect
22 compliance obligations arising under this Order, including: creation,
23 merger, sale, or dissolution of the entity or any subsidiary, parent, or
24 affiliate that engages in any acts or practices subject to this Order.

25 C. Defendant Rackley must submit to the Commission notice of the filing of
26 any bankruptcy petition, insolvency proceeding, or similar proceeding by or against
27 Defendant Rackley, within fourteen (14) days of its filing.

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

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

9 Associate Director for Enforcement
10 Bureau of Consumer Protection
11 Federal Trade Commission
12 600 Pennsylvania Avenue NW
13 Washington, DC 20580

14 The subject line must begin: FTC v. Clinton Rackley, Matter No. X130063.

15 **X.**

16 **Recordkeeping**

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

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

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

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

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

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

XI.

Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Rackley'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 Commission, Defendant Rackley 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, 45, and 69.

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

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant Rackley or any individual or entity affiliated with him, 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 U.S.C. §§ 49, 57b-1.

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

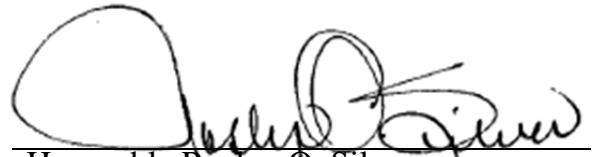
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XII.

Retention of Jurisdiction

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

Dated this 2nd day of June, 2015.



Honorable Roslyn O. Silver
Senior United States District Judge