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

15  
 16 Federal Trade Commission,  
 17 Plaintiff,  
 18 vs.  
 19 Merchant Services Direct, LLC,  
 20 also d/b/a Sphyr, *et al.*,  
 21 Defendants.  
 22

CASE NO. 13-CV-0279-TOR

**(Proposed)**  
**STIPULATION AND ORDER**

23 Plaintiff Federal Trade Commission (“Commission” or “FTC”) and  
 24 Settling Defendants (Merchant Services Direct, LLC, also d/b/a Sphyr, 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.
- 15

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  
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8 presented in a manner that stands out from the accompanying text, so that  
9 it is sufficiently prominent, because of its type size, contrast, location, or  
10 other characteristics, for an ordinary consumer to notice, read and  
11 comprehend it; and  
12

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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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.

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;  
11
- 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.  
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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.  
10           

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:  
14           

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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13 A. Accounting records showing the revenues from all Card  
14 Payment Processing Goods or Services sold;  
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16 B. Personnel records showing, for each person providing services,  
17 whether as an employee or otherwise, that person's: name, addresses, and  
18 telephone numbers; job title or position; dates of service; and, if applicable,  
19 the reason for disciplinary action or termination;  
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22 C. Records of all merchant or consumer complaints and refund and  
23 cancellation requests, whether received directly or indirectly, such as  
24 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).

3  
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 \_\_\_\_ day of \_\_\_\_\_, 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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