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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 jurisdic
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- c) The Business Opportunity Seller, expressly or by implication, orally or in writing, represents that the Seller or one or more Designated Persons will:
 - i. Provide Locations for the use or operation of equipment, displays, vending machines, or similar devices, owned, leased, controlled, or paid for by the purchaser; or
 - ii. Provide Outlets, Accounts, or Customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services; or
 - iii. Buy back any or all of the goods or services that the

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
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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

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 sumr3.

23 **IT IS FURTHER ORDERED**

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

- 1) Identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences, and 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 Defendant Miller;
- 2) Identify all business activities, including any business for which Defendant Miller performs services whether as an employee or otherwise and any entity in which Defendant Miller has any ownership interest;
- 3) Describe in detail Defendant Miller’s involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;
- 4) Identify all of Defendant Miller’s businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
- 5) Describe the activities of each business, including the goods and

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:

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