

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AVANT, LLC,

Defendant.

Case No. 1:19-cv-02517

Judge Harry D. Leinenweber

Magistrate Judge Susan E. Cox

**JOINT MOTION FOR ENTRY OF STIPULATED ORDER
FOR PERMANENT INJUNCTION AND MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission (“FTC”) and Defendant Avant, LLC, (“Avant”) jointly move this Court for entry of Stipulated Order for Permanent Injunction and Monetary Judgment (“Stipulated Final Order”) reached through settlement negotiations between the parties. Entry of the Stipulated Final Order would resolve this case. In support of this motion, the FTC and Avant state as follows:

1. The FTC filed its Complaint for Permanent Injunction and Other Equitable Relief on April 15, 2019, alleging that Avant had violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and other federal laws. [Dkt. 1]
2. The Stipulated Final Order has been signed by Avant and its counsel. The Stipulated Final Order also has been approved by the FTC’s Commissioners and signed by counsel for the FTC.

WHEREFORE, Plaintiff FTC and Avant respectfully request that the Court enter the Stipulated Final Order.¹

Respectfully submitted,

Dated: April 15, 2019

/s/ Daniel O. Hanks
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Counsel for Avant, LLC

¹ The Stipulated Final Order contains handwritten signatures and will therefore be e-mailed to the Court's proposed order e-mail address in both PDF and Word formats, copying all parties.

CERTIFICATE OF SERVICE

I, Daniel O. Hanks, an attorney, hereby certify that on April 15, 2019, I caused to be served true copies of the foregoing Joint Motion for Entry of Stipulated Order for Permanent Injunction and Monetary Order through the CM/ECF System and, with the written consent of counsel, by e-mail on counsel for Defendant Avant, LLC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AVANT, LLC,

Defendant.

Case No. _____

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint (“Complaint”) for a permanent injunction and other equitable relief in this matter.

Defendant has waived service of the Summons and Complaint. The Commission and Defendant stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant participated in acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45 and other federal laws.
3. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.
4. Defendant waives any claim that it may have under the Equal Access to Justice Act,

28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney's fees. Defendant waives and releases any claims that it may have against the Commission and its agents that relate to this action.

5. Defendant and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

1. "Defendant" shall mean Avant, LLC, and its successors and assigns.
2. "Received" shall mean that Defendant, or any agent of Defendant whose responsibilities include handling incoming mail or payments (such as an employee or lockbox vendor), has taken possession.
3. "Remotely Created Payment Order" means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and deposited into or cleared through the check clearing system. The term includes, without limitation, a "remotely created check." It also includes any check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn.
4. The definitions set forth in the FCRA, 15 U.S.C. § 1681a, *et seq.*, shall apply, including but not limited to:
 - a. "Consumer Reporting Agency" shall mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other

information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

ORDER

I. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, and all others in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, marketing, promoting, distributing, servicing, or offering any extension of credit, or collecting on any debt, are permanently restrained and enjoined from misrepresenting, expressly or by implication:

- A. the methods of payment accepted for monthly payments, partial payments, payoffs, or any other purpose;
- B. the amount of payment that will be sufficient to pay off in its entirety the balance of an account;
- C. when payments will be applied or credited, or
- D. any material fact regarding payments, fees, or charges.

II. PROHIBITION AGAINST FAILURE TO TIMELY CREDIT CONSUMER PAYMENTS AND UNFAIR COLLECTION FROM PAID-OFF BORROWERS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys and all others in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with servicing any extension of credit, or collecting on any debt, are permanently restrained and enjoined from:

- A. Failing to (1) post payments that are not post-dated to consumers' accounts within three business days of the date Received, if such payments are accepted payment types and include information sufficient to tie the payment to the specific consumer's account, ***provided, however, that*** if Avant can demonstrate that it is reviewing a payment in accordance with an anti-money laundering or fraud policy it has established and to which it has adhered and that review is the reason for a delay in posting, it may delay the posting during that review; (2) credit payments which are not post-dated as of the date Received; (3) credit payments post-dated less than five days as of the date reflected on the payment; and (4) return payments the consumer post-dated by five days or more to the consumer promptly or deposit them as of the date reflected on the payment;
- B. Failing, within one business day of providing a payoff quote to a consumer, to memorialize in writing and send to the consumer a written record of that payoff quote, stating the amount of the payoff quote and the date after which the quote is no longer effective;
- C. Assessing, attempting to collect, or collecting any interest, late fees, or other fees from any consumer from whom Defendant Received the quoted payoff amount by the date the Defendant had identified as the payment deadline to the consumer, in a form that includes information sufficient to tie the payment to the specific consumer's account and is not dated after the payment deadline unless (1) the consumer's bank returns, subsequent to the provision of the payoff quote, the quoted payoff amount or any other payment, and (2) Defendant notifies the consumer of the return within fourteen days; and
- D. Failing to report the account of any consumer from whom Defendant Received the quoted

payoff amount by the time that Defendant has specified to the consumer as the payment deadline to a Consumer Reporting Agency to which Defendant furnishes information for that consumer as paid off in its entirety within fourteen days following the month in which such payoff amount was Received, unless Defendant notifies the consumer within that period that the quoted payoff amount was inaccurate.

Provided, however, that the requirements of this Section II shall not apply to credit card accounts under an open-end (not home-secured) consumer credit plan subject to Regulation Z of the Truth in Lending Act.

III. PROHIBITION AGAINST UNFAIR BILLING PRACTICES

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys and all others in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with servicing any extension of credit, or collecting on any debt, are permanently restrained and enjoined from charging any consumer at intervals or in amounts that deviate from those for which the consumer provided express, informed consent to Defendant or where Defendant knew or should have known the consumer did not provide express, informed consent.

IV. OTHER PROHIBITIONS

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys and all others in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from:

- A. in connection with originating or servicing any extension of credit, or collecting on any debt, creating or causing to be created, directly or indirectly, a remotely created

payment order as payment. *Provided, however, that* with respect to consumers, who are, as of the date of entry of this Order, enrolled to make payments by Remotely Created Payment Order, Defendant will cease creating or causing to be created, directly or indirectly, Remotely Created Payment Orders within 90 days of the date of entry of this Order; and

B. conditioning the extension of credit on preauthorized electronic fund transfers.

V. MONETARY JUDGMENT FOR EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Three Million, Eight Hundred and Fifty Thousand Dollars (\$3,850,000) is entered in favor of the Commission against Defendant as equitable monetary relief.
- B. Defendant is ordered to pay the Commission Three Million, Eight Hundred and Fifty Thousand Dollars (\$3,850,000), which, as Defendant stipulates, its undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

VI. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any

subsequent civil litigation by or on behalf of the Commission, in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

- C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- D. Defendant acknowledges that its Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendant 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.
- E. 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 Defendant's 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 has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VII. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys and all others in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from 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 must provide it, in the form prescribed by the Commission, within 14 days.

VIII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:

- A. Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 10 years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order, and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

- A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury. Defendant must: (a) 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; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 10 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in: (a) any designated point of contact; or (b) the structure of Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

- C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing.
- D. 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.
- E. 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 Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Avant, LLC (1623090).

X. RECORDKEEPING

IT IS FURTHER ORDERED that Defendant must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant in connection with promoting or offering for sale any good or service, including servicing any extension of credit, or collecting on any debt, must create and retain the following records:

- A. Accounting records showing Defendant’s revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services in relation to any aspect of the Order, whether as an employee or otherwise, that person’s: name; addresses; telephone

numbers; job title or position; dates of service; and (if applicable) the reason for termination;

- C. Records of all consumer complaints and refund requests concerning the subject matter of the Order, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission;
- E. Records of checks, money orders, and any other paper payments, including, for each payment, except for those the consumer post-dated by five days or more and were returned to the consumer promptly: a date-stamped envelope indicating the date Received (or for envelopes Received at a lockbox location, a record of the date, or the day following the date, the payment was Received), a record reflecting the date the payment was deposited, and a record reflecting the date the payment was applied to the consumer's account; and
- F. A copy of each written payoff quote provided to any consumer for whom Defendant services any extension of credit or collects debt.

XI. COMPLIANCE MONITORING

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

- A. Within 14 days of receipt of a written request from a representative of the Commission, Defendant 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. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with Defendant 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 or any individual or entity affiliated with Defendant, 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.

XII. RETENTION OF JURISDICTION

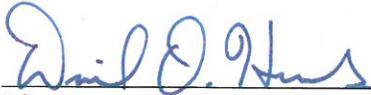
IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this _____ day of _____, 201_.

UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF: FEDERAL TRADE COMMISSION



Lisa Anne Rothfarb

Daniel O. Hanks

Federal Trade Commission

600 Pennsylvania Ave NW

Mail Stop CC-10232

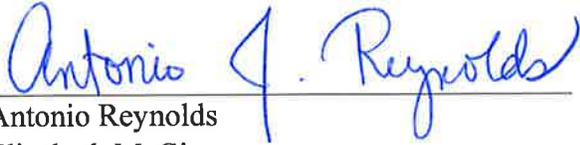
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FOR DEFENDANT:



Date: 1/4/19

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DEFENDANT: Avant, LLC



Date: _____

Adam Hughes, as an officer of Avant, LLC