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8 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

9
10 **Federal Trade Commission,**
11 **Plaintiff,**
12 **v.**

Case No. SACV-06-701 DOC (RNBx)

SETTLEMENT AGREEMENT AND
[Proposed] STIPULATED FINAL
ORDER AS TO DEFENDANT

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1 On October 13, 2005, after a hearing, the Court issued a preliminary injunction
2 against Defendants Connelly, Richard Wade Torkelson, Homeland Financial
3 Services, National Support Services, LLC, and United Debt Recovery, LLC, as well
4 as Financial Liberty Services, LLC.

5 On November 27, 2006, Plaintiff filed its First Amended Complaint, which,
6 inter alia, added Financial Liberty Services as a defendant.

7 Now Plaintiff Commission and Defendant Connelly ("Defendant") have
8 agreed to a settlement of this action.

9 Accordingly, the Commission and Defendant consent to entry of this
10 Settlement Agreement and Stipulated Final Order as to Defendant Connelly
11 ("Order") without adjudication of any issue of fact or law. The parties further agree
12 that entry of this Order in the docket by the Court will constitute notice to the
13 Defendant of the terms and conditions of the Order. Plaintiff and Defendant having
14 requested the Court to enter this Order, the Court hereby finds and orders as follows:

15 **FINDINGS OF FACT**

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17 1. Defendant was properly served with the Complaint, Summons, TRO
18 and First Amended Complaint in this matter.

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1 5. The allegations of the Complaint and the First Amended Complaint
2 state a claim upon which relief can be granted against Defendant under Sections 5(a)
3 and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

4 6. Plaintiff has the authority under Section 13(b) of the FTC Act, 15
5 U.S.C. § 53(b), to seek the relief it has requested.

6 7. Defendant has not admitted liability as to the charges in the Complaint
7 or the First Amended Complaint, and his consent to settle and finally resolve this
8 action shall not be interpreted to constitute an admission that he has engaged in any
9 violations of any law or regulations.

10 8. Defendant waives all rights to seek judicial review or otherwise
11 challenge or contest the validity of this Order.

12 9. Defendant waives any claim that he may hold against the Commission,
13 its employees, representatives or agents.

14 10. Defendant waives any claim that they may hold under the Equal Access
15 to Justice Act, 28 U.S.C. § 2412 (as amended), concerning the prosecution of this
16 action to the date of this Order, and any rights to attorneys' fees that may arise under
17 said provision of law.

18 11. All parties shall bear their own costs and attorneys' fees.

19 12. Defendant enters into this Order freely, and acknowledges that he
20 understands the provisions of this Order and is prepared to abide by its terms.

21 13. This Order is remedial in nature and shall not be construed as the
22 payment of a fine, penalty, punitive assessment, or forfeiture.

23 14. Entry of this Order is in the public interest and in the interest of the
24 parties.

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DEFINITIONS

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1 b. the term "telemarketing" is also intended to include, but is not limited
2 to, attempts to induce businesses to purchase toner or other office
3 supplies by means of telephone sales presentations;

4 c. the term "telemarketing" does not include transactions that are not
5 completed until after a face-to-face contact between the seller or
6 solicitor and the consumers solicited.

7 5. The term "**debt negotiation**" means

8 a) the business or practice of receiving, in return for consideration,
9 or the scheduled receipt, of an individual consumer's monies, or
10 evidences thereof, for the purpose of distribution among certain
11 specified creditors in payment, or partial payment, of the
12 individual consumer's obligations; or

13 b) the business or practice of acting or offering or attempting to act
14 as an intermediary between an individual consumer and his
15 creditors for the purpose of settling, negotiating, or in any way
16 altering the terms of payment of any debt of an individual
17 consumer.

18 6. "**Consumer**" means any natural person.

19 7. "**Assisting others**" means knowingly providing any of the following
20 goods or services to another person or entity:

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ORDER

I.

PROHIBITION ON TELEMARKETING

IT IS THEREFORE ORDERED that Defendant, his agents, servants,

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1 **III.**

2 **PROHIBITION ON MATERIAL MISREPRESENTATIONS**

3 **IT IS FURTHER ORDERED** that Defendant, his agents, servants,
4 employees, and attorneys, and those persons or entities in active concert or
5 participation with him who receive actual notice of this Order by personal service or
6 otherwise, whether acting directly or through any corporation, subsidiary, division,
7 or other device, in connection with the advertising, marketing, promoting, offering
8 for sale, or sale of any good or service, are hereby permanently restrained and
9 enjoined from falsely representing, or from knowingly assisting others who are
10 falsely representing, any fact material to a consumer's decision to purchase such
11 good or service.

12 **IV.**

13 **PROHIBITION AGAINST MATERIAL OMISSIONS**

14 **IT IS FURTHER ORDERED** that Defendant, his agents, servants,
15 employees, and attorneys, and those persons or entities in active concert or
16 participation with him who receive actual notice of this Order by personal service or
17 otherwise, whether acting directly or through any corporation, subsidiary, division,
18 or other device, in connection with the advertising, promotion, offering for sale or
19 sale of any products, programs, or services, are hereby permanently restrained and
20 enjoined from failing to disclose, clearly and conspicuously, prior to the time when a
21 consumer purchases such service or product, all information material to a consumer's
22 decision to buy such products, programs, or services.

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V.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Within forty-five days of entry of this Order, Defendant shall pay to the Commission the sum of \$45,000.00 (FORTY-FIVE THOUSAND DOLLARS). Payment shall be made by certified or cashier's check made payable to the Federal Trade Commission or through wire transfer to an account designated by the Commission or its agent. Payment by certified or cashier's check shall be remitted to the Federal Trade Commission, Western Region, 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024;

B. Defendant agrees to the continuation of the appointment of Robb Evans & Associates LLC as Permanent Receiver over Financial Liberty Services, LLC ("Financial Liberty"), Homeland Financial Services ("Homeland"), and National Support Services ("NSS"), and also as the Receiver over Federal Reverse Mortgage ("FRM"), with all of the same rights, duties and powers as set forth in the October 13, 2006 Preliminary Injunction which appointed Robb Evans as Permanent Receiver over all of the Corporate Defendants in this matter. Defendant waives and assigns to the Receiver any interest he might have in all accounts and assets held in the name of Financial Liberty, Homeland, NSS and FRM.

C. For purposes of this section, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Defendant waives any right to contest any of the allegations set forth in the First Amended Complaint filed in this matter or the amount of the payment referenced in this Paragraph;

D. Defendant's personal accounts and any other assets which were frozen pursuant to the orders entered in this case shall be unfrozen upon the entry of this Final Order;

1 E. If Defendant fails to make the \$45,000.00 payment under Paragraph
2 V.A of this Order within the prescribed time period, the Commission may apply to
3 the Court for entry of a judgment against Defendant in the amount of \$9,500,00.00
4 (NINE MILLION FIVE HUNDRED THOUSAND DOLLARS), which amount shall
5 be immediately due and payable, less any amounts obtained from Defendant
6 Torkelson pursuant to settlement or judgment in this case. For purposes of this jEMC /LI_Title ,

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2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs, and

3. Delegate any and all tasks connected with such restitution program to any individual, partnerships, or corporations; and pay reasonable fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order;

G. Defendant expressly waives any rights he may possess to litigate the issue of monetary relief. Defendant acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between Plaintiff and Defendant; and

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1 **VIII.**

2 **COMPLIANCE MONITORING**

3 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
4 investigating compliance with any provision of this Order:

5 A. Within fourteen (14) days of receipt of written notice from a
6 representative of the Commission, Defendant shall submit additional written
7 reports, sworn to under penalty of perjury; produce documents for inspection
8 and copying; appear for deposition; and/or provide entry to any Commission
9 representatives during normal business hours to any business location in
10 Defendant's possession or direct or indirect control for the purpose of
11 inspecting the business operation. Defendant, after attempting to resolve a
12 dispute without court action, and for good cause shown, may file a motion
13 with this Court seeking an order which justice requires to protect Defendant or
14 any party or person from annoyance, embarrassment, oppression, or undue
15 burden or expense, including one or more of the protections set forth in Fed.
16 R. Civ. P. 26 (c);

17 B. In addition, the Commission is authorized to monitor compliance with
18 this Order by all other lawful means, including but not limited to the
19 following:

- 20 1. Obtaining discovery from any person, without further leave of court,
21 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
22 and 45; and
23 2. Posing as consumers and suppliers to Defendant's employees, or any
24 other entity managed or controlled in whole or in part by Defendant,
25 without the necessity of identification or prior notice; and

26 C. Defendant shall permit representatives of the Commission to interview
27 any employer, consultant, independent contractor, representative, agent, or
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1 employee who has agreed to such an interview, relating in any way to any
2 conduct subject to this Order. The person interviewed may have counsel
3 present.

4 *Provided, however,* that nothing in this Order shall limit the Commission's
5 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
6 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony,
7 or information relevant to unfair or deceptive acts or practices in or affecting
8 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

9 **IX.**

10 **COMPLIANCE REPORTING BY DEFENDANT**

11 **IT IS FURTHER ORDERED** that, in order that compliance with the
12 provisions of this Order may be monitored:

13 A. For a period of five (5) years from the date of entry of this Order,
14 Defendant shall notify the Commission in writing of:

- 15 1. Any change in Defendant's residence, mailing address and/or telephone
16 numbers within ten (10) days of such change; and
- 17 2. Any change in Defendant's employment status (including self
18 employment) and any change in the ownership interest of Defendant in
19 any business entity, within ten (10) days of such change. Such notice
20 shall include the name and address of each business that Defendant is
21 affiliated with, employed by, or performs services for, a statement of the
22 nature of the business, and a statement of Defendant's duties and
23 responsibilities in connection with the business and employment; and
- 24 3. Any changes in Defendant's name or use of any aliases or fictitious
25 names.

26 B. One hundred eighty (180) days after the date of entry of this Order,
27 Defendant shall provide a written report to the Commission, sworn to under
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1 penalty of perjury, setting forth in detail the manner and form in which he has
2 complied and is complying with this Order. This report shall include, but not
3 be limited to:

- 4 1. A copy of each acknowledgment of receipt of this Order, obtained
5 pursuant to Paragraph XII, below; and
- 6 2. Any other changes required to be e205 Tc e 22e]5a

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1 any trial, deposition, or other proceeding related to or associated with the
2 transactions or the occurrences that are the subject of the Complaint, without the
3 service of a subpoena. The Commission shall provide reasonable notice to
4 Defendant of any need for his appearance and shall keep designated counsel for
5 Defendant apprised of developments in the litigation. The Commission
6 acknowledges that Defendant may provide the same level of cooperation to any other
7 Defendant in this action under the same terms and conditions.

8 **XI.**

9 **RECORD KEEPING PROVISIONS**

10 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the date
11 of entry of this Order, Defendant and his agents, employees, officers, corporations,
12 successors, and assigns, and those persons in active concert or participation with him
13 who receive actual notice of this Order by personal service or otherwise, while
14 engaging in conduct related to the subject matter of this Order, are hereby restrained
15 and enjoined from failing to create and retain the following records:

16 A. Accounting records that reflect the cost of goods or services sold,
17 revenues generated, and the disbursement of such revenues;

18 B. Personnel records accurately reflecting: the name, address, email (if
19 any) and telephone number of each person employed in any capacity by such
20 business, including as an independent contractor; that person's job title or
21 position; the date upon which the person commenced work; and the date and
22 reason for the person's termination, if applicable;

23 C. Customer files containing the names, addresses, phone numbers, dollar
24 amounts paid, quantity of items or services purchased, and description of items
25 or services purchased, to the extent such information is obtained in the
26 ordinary course of business;

1 D. Complaints and refund requests (whether received directly, indirectly or
2 through any third party) and any responses to those complaints or requests;

3 E. Copies of all sales scripts, training materials, advertisements, website
4 printouts, or other marketing materials; and

5 F. All records and documents necessary to demonstrate full compliance
6 with each provision of this Order, including but not limited to, copies of
7 acknowledgments of receipt of this Order, required by Paragraph XII, below,
8 and all reports submitted to the FTC pursuant to Paragraph IX, above.

9 **XII.**

10 **DISTRIBUTION OF ORDER BY DEFENDANT**

11 **IT IS FURTHER ORDERED** that, for a period of four (4) years from the
12 date of entry of this Order, Defendant shall deliver copies of this Order as directed
13 below:

14 A. For any business that Defendant controls, directly or indirectly, or in
15 which Defendant has a majority ownership interest, Defendant must deliver a copy
16 of this Order to all principals, officers, directors, and managers of that business.
17 Defendant must also deliver copies of this Order to all employees, agents, and
18 representatives of that business who engage in conduct related to the subject matter
19 of the Order. For current personnel, delivery shall be within (5) days of service of
20 this Order upon Defendant. For new personnel, delivery shall occur prior to them
21 assuming their responsibilities.

22 B. For any business where Defendant is not a controlling person of a
23 business but otherwise engages in conduct related to the subject matter of this Order,
24 Defendant must deliver a copy of this Order to all principals and managers of such
25 business before engaging in such conduct.

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1 C. Defendant must secure a signed and dated statement acknowledging
2 receipt of the Order, within thirty days of delivery, from all persons receiving a copy
3 of the Order pursuant to this Paragraph XI.

4 **XIII.**

5 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

6 **BY DEFENDANT**

7 **IT IS FURTHER ORDERED** that, within five (5) business days of receipt of
8 this Order as entered by the Court, Defendant must submit to the Commission a
9 truthful sworn statement acknowledging receipt of this Order.

10 **XIV.**

11 **SEVERABILITY**

12 **IT IS FURTHER ORDERED** that the provisions of this Order are separate
13 and severable from one another. If any provision is stayed or determined to be
14 invalid, all of the remaining provisions shall remain in full force and effect.

15 **XV.**

16 **PETITIONS FOR MODIFICATION**

17 **IT IS FURTHER ORDERED** that nothing in this Order shall be construed as
18 prohibiting Defendant from petitioning the Court at any time for a modification to
19 this Order. Provided further, however, that nothing in this Paragraph shall be
20 construed to establish or modify any standards that would be applicable to a
21 unilateral motion by either party for modification to this Order.

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XVI.

RETENTION OF JURISDICTION

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

SO STIPULATED:

_____, 2007

Dennis Connelly, Defendant

_____, 2007

Jennifer Larabee
John D. Jacobs
Barbara Y.K. Chun
Attorneys for Plaintiff Federal Trade
Commission

APPROVED AS TO FORM:

_____, 2007

H. Dean Steward
Attorney for Defendant Dennis Connelly

SO ORDERED:

_____, 2007

The Honorable David O. Carter
United States District Judge