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23 FEDERAL TRADE COMMISSION

24 **UNITED STATES DISTRICT COURT**
25 **DISTRICT OF NEVADA**

26 FEDERAL TRADE COMMISSION,

27 Plaintiff,

v.

PHILIP DANIELSON, LLC, *et al.*

Defendants.

Case No. 2:14-cv-00896-GMN-VCF

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND
MONETARY RELIEF AS TO PHILIP DANIELSON, LLC; AND PHILIP J.
DANIELSON**

1 claim to those funds.

2 3. Settling Defendants neither admit nor deny any of the allegations in the
3 Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling
4 Defendants admit the facts necessary to establish jurisdiction.

5 4. Settling Defendants waive any claim that they may have under the Equal Access
6 to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of
7 this Order, and agree to bear their own costs and attorney fees.

8 5. Settling Defendants and the Commission waive all rights to appeal or otherwise
9 challenge or contest the validity of this Order.

10 DEFINITIONS

11 For the purposes of this Order, the following definitions shall apply:

12 A. **“Financial Product or Service”** means any product, service, plan, or program
13 represented, expressly or by implication, to:

- 14 1. provide any consumer, arrange for any consumer to receive, or assist any
15 consumer in receiving, a loan or other extension of credit;
- 16 2. provide any consumer, arrange for any consumer to receive, or assist any
17 consumer in receiving, credit, debit, or stored value cards;
- 18 3. improve, repair, or arrange to improve or repair, any consumer’s credit record,
19 credit history, or credit rating; or
- 20 4. provide advice or assistance to improve any consumer’s credit record, credit
21 history, or credit rating.

22 B. **“Person”** means any individual, group, unincorporated association, limited or general
23 partnership, corporation or other business entity.

24 C. **“Secured or unsecured debt relief product or service”** means:

- 25 1. with respect to any mortgage, loan, debt, or obligation between a person and one
26 or more secured or unsecured creditors or debt collectors, any product, service,
27 plan, or program represented, expressly or by implication, to:

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- i. stop, prevent, or postpone any mortgage or deed of foreclosure sale for a person's dwelling, any other sale of collateral, any repossession of a person's dwelling or other collateral, or otherwise save a person's dwelling or other collateral from foreclosure or repossession;
- ii. negotiate, obtain, or arrange a modification, or renegotiate, settle, or in any way alter any terms of the mortgage, loan, debt, or obligation, including a

1 customers in response to the catalog and during those calls takes orders only without
2 further solicitation. For purposes of the previous sentence, the term “further solicitation”
3 does not include providing the customer with
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1 permanently restrained and enjoined from misrepresenting or assisting others in
2 misrepresenting, expressly or by implication, any material fact, including:

3 A. the terms or rates that are available for any loan or other extension of credit,
4 including:

- 5 1. closing costs or other fees;
- 6 2. the payment schedule, monthly payment amount(s), any balloon payment,
7 or other payment terms;
- 8 3. the interest rate(s), annual percentage rate(s), or finance charge(s), and
9 whether they are fixed or adjustable;
- 10 4. the loan amount, credit amount, draw amount, or outstanding balance; the
11 loan term, draw period, or maturity; or any other term of credit;
- 12 5. the amount of cash to be disbursed to the borrower out of the proceeds, or
13 the amount of cash to be disbursed on behalf of the borrower to any third
14 parties;
- 15 6. whether any specified minimum payment amount covers both interest and
16 principal, and whether the credit has or can result in negative amortization;
17 or
- 18 7.

PROHIBITION AGAINST MISREPRESENTATIONS RELATING TO ANY PRODUCTS OR SERVICES

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2 III. **IT IS FURTHER ORDERED** that Settling Defendants, Settling Defendants’ officers,
3 agents, servants, employees, and attorneys, and all other persons in active concert or
4 participation with any of them, who receive actual notice of this Order, whether acting
5 directly or indirectly, in connection with advertising, marketing, promoting, offering for
6 sale, or selling any product or service are hereby permanently restrained and enjoined
7 from misrepresenting or assisting others in misrepresenting, expressly or by implication,
8 any material fact, including:

- 9 A. any material aspect of the nature or terms of any refund, cancellation, exchange,
10 or repurchase policy, including the likelihood of a consumer obtaining a full or
11 partial refund, or the circumstances in which a full or partial refund will be
12 granted to the consumer;
- 13 B. that any person is affiliated with, endorsed or approved by, or otherwise
14 connected to any other person; government entity; public, non-profit, or other
15 non-commercial program; or any other program;
- 16 C. the nature, expertise, position, or job title of any person who provides any product
17 or service;
- 18 D. the person who will provide any product or service;
- 19 E. that any person providing a testimonial has purchased, received, or used the
20 product or service;
- 21 F. that the experience represented in a testimonial of the product or service
22 represents the person’s actual experience resulting from the use of the product or
23 service under the circumstances depicted in the advertisement;
- 24 G. the total costs to purchase, receive, or use, or the quantity of, the product or
25 service;
- 26 H. any material restriction, limitation, or condition on purchasing, receiving, or using
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1 the product or service; or

- 2 I. any other fact material to consumers concerning any product or service, including
3 any material aspect of the performance, efficacy, nature, or characteristics of the
4 product or service.

5 **SUBSTANTIATION FOR BENEFIT, PERFORMANCE, AND EFFICACY CLAIMS**

- 6 IV. **IT IS FURTHER ORDERED** that Settling Defendants, Settling Defendants' officers,
7 agents, servants, employees, and attorneys, and all other persons in active concert or
8 participation with any of them, who receive actual notice of this Order, whether acting
9 directly or indirectly, in connection with the advertising, marketing, promotion, offering
10 for sale, or sale of any financial related product or service are hereby permanently
11 restrained and enjoined from making any representation or assisting others in making any
12 representation, expressly or by implication, about the benefits, performance, or efficacy
13 of any financial related product or service, unless at the time such representation is made,
14 Settling Defendants possess and rely upon competent and reliable evidence that
15 substantiates that the representation is true.

16 **BAN ON TELEMARKETING**

- 17 V. **IT IS FURTHER ORDERED** that Settling Defendants are permanently restrained and
18 enjoined from engaging, whether directly or through an intermediary, in telemarketing.
19 Provided that Section V shall not prohibit Settling Individual Defendant from engaging in
20 telemarketing relating to the direct provision of legal services by Settling Individual
21 Defendant in connection with bankruptcy proceedings, estate planning, or the closing and
22 execution of real estate transactions. This proviso shall not be construed to limit the
23 licensing or regulatory powers of
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THOUSAND DOLLARS (\$28,600,000) is entered in favor of the Commission
against Settling Defendants jointly and se

1 M. All money paid to the Commission pursuant to this Order may be deposited into a
2 fund administered by the Commission or its designee to be used for equitable
3 relief, including consumer redress and any attendant expenses for the
4 administration of any redress fund. If a representative of the Commission decides
5 that direct redress to consumers is wholly or partially impracticable or money
6 remains after redress is completed, the Commission may apply any remaining
7 money for such other equitable relief (including consumer information remedies)
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1 address, telephone number, email address, social security number, other
2 identifying information, or any data that enables access to a customer's account
3 (including a credit card, bank account, or other financial account), that any
4 Settling Defendant obtained prior to entry of this Order; and

- 5 C. failing to destroy such customer information in all forms in their possession,
6 custody, or control within 30 days after receipt of written direction to do so from a
7 representative of the Commission.

8 *Provided*, however, that customer information need not be disposed of, and may be
9 disclosed, to the extent requested by a government agency or required by law,
10 regulation, or court order.

11 COOPERATION

- 12 IX. **IT IS FURTHER ORDERED** that Settling Defendants must fully cooperate with
13 representatives of the Commission in this case and in any investigation related to or
14 associated with the transactions or the occurrences that are the subject of the Complaint.
15 Such Settling Defendants must provide truthful and complete information, evidence, and
16 testimony. Such Settling Individual Defendant must appear and such Settling Corporate
17 Defendant must cause Settling Corporate Defendant's officers, employees,
18 representatives, or agents to appear for interviews, discovery, hearings, trials, and any
19 other proceedings that a Commission representative may reasonably request upon 5 days
20 written notice, or other reasonable notice, at such places and times as a Commission
21 representative may designate, without the service of a subpoena.

22 ORDER ACKNOWLEDGMENTS

- 23 X. **IT IS FURTHER ORDERED** that Settling Defendants obtain acknowledgments of
24 receipt of this Order:

- 25 A. Each Settling Defendant, within 7 days of entry of this Order, must submit to the
26 Commission an acknowledgment of receipt of this Order sworn under penalty of
27 perjury.

- 1 B. For 10 years after entry of this Order, Settling Individual Defendant for any
2 business that such Settling Individual Defendant, individually or collectively with
3 any other Settling Defendants, is the majority owner or controls directly or
4 indirectly, and Settling Corporate Defendant, must deliver a copy of this Order to:
5 (1) all principals, officers, directors, and LLC managers and members; (2) all
6 employees, agents, and representatives who participate in connection with the
7 advertising, marketing, promotion, offering for sale, sale, or performance of any
8 financial-related products or services; and (3) any business entity resulting from
9 any change in structure as set forth in the Section titled Compliance Reporting.
10 Delivery must occur within 7 days of entry of this Order for current personnel.
11 For all others, delivery must occur before they assume their responsibilities.
- 12 C. From each individual or entity to which a Settling Defendant delivered a copy of
13 this Order, that Settling Defendant must obtain, within 30 days, a signed and
14 dated acknowledgment of receipt of this Order.

15 COMPLIANCE REPORTING

16 XI. **IT IS FURTHER ORDERED** that Settling Defendants make timely submissions to the
17 Commission:

- 18 A. One year after entry of this Order, each Settling Defendant must submit a
19 compliance report, sworn under penalty of perjury:
- 20 1. Each Settling Defendant must: (a) identify the primary physical, postal,
21 and email address and telephone number, as designated points of contact,
22 which representatives of the Commission and may use to communicate
23 with Settling Defendant; (b) identify all of that Settling Defendant's
24 businesses by all of their names, telephone numbers, and physical, postal,
25 email, and Internet addresses; (c) describe the activities of each business,
26 including the goods and services offered, the means of advertising,
27 marketing, and sales, and the involvement of any other Defendant (which

1 Settling Individual Defendant performs services whether as an employee
2 or otherwise and any entity in which such Settling Individual Defendant
3 has any ownership interest, and identify the name, physical address, and
4 any Internet address of the business or entity.

5 C. Each Settling Defendant must submit to the Commission notice of the filing of
6 any bankruptcy petition, insolvency proceeding, or similar proceeding by or
7 against such Settling Defendant within 14 days of its filing.

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

14 E. Unless otherwise directed by a Commission representative in writing, all
15 submissions to the Commission pursuant to this Order must be emailed to
16 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
17 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
18 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
19 subject line must begin: FTC v. Philip Danielson, LLC, et al., Case No. 2:14-cv-
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- 1 A. accounting records showing the revenues from all goods or services sold;
- 2 B. personnel records showing, for each person providing services, whether as an
- 3 employee or otherwise, that person's: name; addresses; telephone numbers; job
- 4 title or position; dates of service; and (if applicable) the reason for termination;
- 5 C. records of all consumer complaints and refund requests, whether received directly
- 6 or indirectly, such as through a third party, and any response;
- 7 D. all records necessary to demonstrate full compliance with each provision of this
- 8 Order, including all submissions to the Commission; and
- 9 E. a copy of each unique advertisement or other marketing material.

10 **COMPLIANCE MONITORING**

11 **XIII. IT IS FURTHER ORDERED** that, for the purpose of monitoring Settling Defendants'

12 compliance with this Order, including the financial attestations upon which part of the

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1 Defendants or any individual or entity affiliated with Settling Defendants, without
2 the necessity of identification or prior notice. Nothing in this Order limits the
3 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
4 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

5 **ENTRY OF JUDGMENT**

6 XIV. **IT IS FURTHER ORDERED** that there is no just reason for delay of entry of this
7 judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk
8 immediately shall enter this Order as a final judgment as to Settling Defendants Philip
9 Danielson, LLC and Philip J. Danielson.

10 **RETENTION OF JURISDICTION**

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

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16 IT IS SO ORDERED:

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18 GLORIA M. NAVARRO, CHIEF JUDGE
19 UNITED STATES DISTRICT COURT

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21 DATED: _____
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