

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 06-61851-CIV-UNGARO/O'SULLIVAN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

RANDALL L. LESHIN,
RANDALL L. LESHIN, P.A., also d/b/a Express Consolidation, Inc.,
EXPRESS CONSOLIDATION, INC.,
CHARLES FERDON,
CONSUMER CREDIT CONSOLIDATION, INC.,
and MAUREEN A. GAVIOLA,

Defendants.

FILED by _____ D.C.

MAY 05 2008

STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
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STIPULATED INJUNCTION AND ORDER AS TO DEFENDANTS RANDALL L. LESHIN, RANDALL L. LESHIN, P.A., EXPRESS CONSOLIDATION, INC., AND CHARLES FERDON

This matter comes before the Court on the stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission") and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon (hereinafter "Defendants").¹

The Commission and Defendants submit the following Stipulated Injunction and Order to resolve the claims set forth in Plaintiff's Amended Complaint for Injunctive and Other Equitable Relief. The Commission and Defendants consent to the entry of this Order as a settlement of this

¹ Two parties named as defendants in the Amended Complaint in this action, Maureen A. Gaviola and Consumer Credit Consolidation, Inc., are not parties to this Stipulated Injunction and Order and, with the exception of the caption, references to Defendants herein do not include these parties.

action, and agree that entry of this Order shall constitute a full, complete and final settlement of all matters in dispute between the Commission and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon arising from the Amended Complaint.

Upon the joint motion of the Commission and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon, the Court makes the following findings and enters judgment in this action as follows:

FINDINGS OF FACT

1. This Court has jurisdiction over the subject matter of this case and the Defendants for purposes of this Stipulation, entry of this Order and any proceedings to enforce this Order.
2. The Commission and Defendants have agreed to this Order to settle all matters in dispute arising from the Amended Complaint in this action. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by any of the Defendants of any violation of any law or regulation, or that Defendants engaged in unlawful or deceptive conduct alleged in the Amended Complaint. This Order does not constitute and should not be construed as approval or endorsement by the Commission of any practices of Defendants, past or prospective, nor construed as an admission by the Commission that (i) Defendants are qualified to provide debt consolidation services under state law; (ii) Express Consolidation, Inc. has been operated as a not-for-profit corporation; (iii) Express Consolidation, Inc. qualifies as a

tax-exempt organization under 26 U.S.C. § 501(c)(3); or (iv) that any of the claims alleged in the Amended Complaint lack merit.

3. The Commission and Defendants acknowledge that they have read the provisions of this Order and have agreed to abide by them. The Commission and Defendants consent freely and without coercion to entry of this Order in the interest of settling this litigation, and acknowledge that they understand the provisions of this Order and are prepared to abide by its terms. At all times, the Commission and Defendants have been represented by counsel, including during the negotiations that led to this Order.
4. The Commission and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order.
5. Defendants waive and release any claim they may have against the Commission and its employees, representatives or agents arising from this action to date. The Commission waives and releases any claim it may have against the Defendants and their employees, representatives or agents arising from this action to date.
6. Each party shall bear its own costs and attorneys' fees. Defendants waive all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, arising from the Amended Complaint.
7. This Order should not be construed as payment of a fine, penalty, punitive assessment or forfeiture, and the monetary judgment provided herein is based on the amount of money the Commission would have sought as restitution for consumers if the parties had not stipulated to this Order.
8. Entry of this Stipulation and Order is in the public interest.

DEFINITIONS

For the purpose of this Stipulation and Order, the following definitions shall apply:

- A. “Corporate Defendants” means Express Consolidation, Inc. and Randall L. Leshin, P.A., individually or collectively.
- B. “Individual Defendants” means Randall L. Leshin and Charles Ferdon, individually or collectively.
- C. “Defendants” means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
- D. “Application fee” means a fee that is charged in whole or in part for preparing, negotiating or securing a schedule of payments for a consumer and is charged even if the consumer declines, rejects or otherwise does not make any payments pursuant to this schedule of payments.
- E. “Assets” means all real and personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes,” and “securities” (as these terms are defined in the Uniform Commercial Code), lines of credit, and all cash, wherever located.
- F. “Assisting others” means providing any of the following goods or services to another person: (i) serving as an officer, director, or consultant; (ii) performing customer service functions, including, but not limited to, receiving or responding to customer complaints; (iii) formulating or providing, or arranging for the formulation or provision of, any script or any other material for communicating with customers or potential customers; (iv)

providing names of, or assisting in the generation of contacts to, potential customers, including, but not limited to, arranging for the automated delivery of messages to potential customers; (v) performing marketing services of any kind; or (vi) providing any other substantial help or aid, while knowing or consciously avoiding knowing that the person receiving assistance is engaged in an act or practice that is prohibited by this Order.

- G. “Billing information” means any data that enables any person to access a customer’s or donor’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card account.
- H. “Clear and conspicuous” means the required disclosures are:
- (1) not accompanied by other communications that are contrary to, are inconsistent with, or mitigate the required disclosures;
 - (2) made in the same language as that principally used in any accompanying advertisement;
 - (3) readily noticeable and, if conveyed through an interactive medium, not conveyed through avoidable hyperlinks or similar methods; and
 - (4) (a) if conveyed through text (*e.g.*, printed publications or words displayed on the screen of an electronic device), in a type of a size, weight, and color that contrasts with the background, is readable and draws attention to the disclosures;
(b) if conveyed through oral or audio communications (*e.g.*, telephone, radio or streaming audio), delivered at a cadence and audible level that is intelligible to the receiving audience and, in any event, is no faster than the cadence principally

used in the accompanying oral or audio communications and at least the same audible level as that principally used in the accompanying oral or audio communications;

(c) if conveyed through video communications (*e.g.*, television, streaming video, online services), in text that is consistent with Subparagraph (4)(a) of this definition and appears on the screen for a duration sufficient for an ordinary consumer to read and comprehend the disclosures.

I. “Debt consolidation service” means:

- (1) receiving money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer’s obligation;
- (2) arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer’s obligation;
- (3) exercising direct or indirect control, or arranging for the exercise of such control, over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer’s obligation; or
- (4) acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of altering the terms of payment of the consumer’s obligation.

- J. “Debt management plan” means a schedule of payments that an individual has agreed to make to an intermediary as part of a plan to repay a creditor or group of creditors through an intermediary.
- K. “Documents” and “records” mean writings, drawings, charts, graphs, photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained, and are equal in scope and synonymous in meaning to the usage of the term documents in Federal Rule of Civil Procedure 34(a).
- L. “Defendants’ Financial Statements” means the financial disclosure questionnaire dated December 18, 2007, and signed by Charles Ferdon; the document entitled “Federal Trade Commission Financial Statement of Individual Defendant,” dated December 19, 2007, and signed by Randall L. Leshin; the document entitled “Federal Trade Commission Financial Statements of Corporate Defendant” (Randall L. Leshin, P.A.) dated December 19, 2007, signed by Defendant Randall L. Leshin; the documents entitled “Financial Statement of Corporate Defendant” (Express Consolidation, Inc.), dated February 22, 2007 and February 14, 2008, and signed by Randall L. Leshin; the Profit and Loss Statement and Balance Sheet for Express Consolidation, Inc., certified by David Culver and provided to the Commission on or about February 6, 2008; the List of Financial Institutions/Accounts of accounts of Randall L. Leshin and Randall L. Leshin, P.A. signed by Randall L. Leshin and dated January 24, 2008; the list of accounts of Randall L. Leshin, P.A. captioned “ATTACHMENT A” signed by Randall L. Leshin and dated January 24, 2008; 1099-MISC forms produced as EXPRESS-PROD-5TH-8th-002489-94; all documents that reaffirm or are identified as exhibits, addendums, supplements, or

attachments to these Financial Statements; and records of Sun Trust bank account disclosures provided through online access under the Stipulated Interim Injunction entered in this action on January 29, 2007.

- M. “Existing clients” means persons who: (i) have signed an agreement for debt consolidation services with Randall L. Leshin, Randall L. Leshin, P.A. (including contracts under the name “Debt Management Counseling Center”), or Debt Management Counseling Center, Inc.; (ii) have not notified Defendants that they are canceling such services; and (iii) have made a payment for such services to Randall L. Leshin, Randall L. Leshin, P.A., or Debt Management Counseling Center, Inc. during the sixty (60) days prior to the date this Order is entered.
- N. “Holding Account” means the SunTrust bank account in the name of Randall L. Leshin, P.A. with account number xxxxxxxxx8395, which is referenced in Paragraph VI.D.3 of the Stipulated Interim Injunction entered in this action on January 29, 2007.
- O. “National Do Not Call Registry” means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).
- P. “Nonprofit entity” means an entity that does not distribute any part of its income or profit to members, directors, or officers, or is described as being “nonprofit,” “not-for-profit” or dedicated primarily or exclusively to charitable, religious or educational purposes. This definition shall be construed consistent with applicable state law where the nonprofit entity is incorporated or organized.
- Q. “Outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

- R. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- S. Express Consolidation, Inc. is "qualified to provide debt management services" in a state as that phrase is used in this Order if:
- (1) The state does not issue licenses for entities that offer or provide debt consolidation services and, thirty (30) days after the date this Order is entered, Express Consolidation, Inc. has fulfilled any requirements imposed by state law to provide such services, including any registration, reporting, audit, insurance, escrow account or trust account requirement; or
 - (2) The state issues licenses for entities that offer or provide debt consolidation services and, sixty (60) days after this Order is entered, Express Consolidation, Inc. (a) has a valid, current license from the state authority that issues licenses for entities that offer or provide debt consolidation services; or (b) Express Consolidation, Inc. has a pending application and the state has unambiguously stated in writing that it will permit Express Consolidation, Inc. to offer debt consolidation services to residents of that state who are currently being serviced by Express Consolidation, Inc. for debt consolidation services based on the pending application.
- T. "Representatives" means Defendants' successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise.

- U. “Savings or estimated savings” means a representation, directly or by implication, that agreeing to purchase services will save a consumer time or money, including but not limited to a representation that purports to describe the difference or estimated difference between the cost or duration of payments if services are purchased and the cost or duration of payments if the purchaser adopts an alternative to the services that is identified directly or by implication.
- V. “Seller” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
- W. “Telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.
- X. “Telemarketing” is defined by the Telemarketing Sales Rule, 16 C.F.R. § 310.2(cc), and means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include

providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

Y. "Telemarketing Sales Rule" or "Rule" means the Rule promulgated by the FTC entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310, the text of which is included as an Appendix to this Order.

Z. "Unexpended trust money" means the sum of all money paid by or on behalf of a person who has contracted for debt consolidation services less any amounts that have already been paid to creditors on behalf of the client and less fees that are authorized by the client.

ORDER

I.

PROHIBITION AGAINST DECEPTIVE MARKETING PRACTICES

IT IS HEREBY ORDERED that, in connection with the advertising, promotion, offering, or sale of debt consolidation services, Defendants and their Representatives are hereby restrained and enjoined from making or assisting others in making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity, including, but not limited to:

A. Falsely representing or assisting others in falsely representing that Defendants offer, sell or provide contracts for debt consolidation services with a nonprofit entity; that the debt consolidation services that Defendants offer, sell or provide are services of a nonprofit entity; or that fees for the debt consolidation services that Defendants offer, sell or provide are collected or controlled by a nonprofit entity;

- B. Falsely representing or assisting others in falsely representing that the only fee charged for debt consolidation services is a monthly administrative fee;
- C. Falsely representing or assisting others in falsely representing that Defendants do not charge an application fee for debt consolidation services;
- D. Falsely representing or assisting others in falsely representing that fees for debt consolidation services represent a deposit or are refunded upon completion of the debt consolidation services;
- E. Falsely representing or assisting others in falsely representing the costs of or fees for debt consolidation services;
- F. Falsely representing or assisting others in falsely representing that the debt consolidation services will lower a consumer's monthly payment or total debt;
- G. Falsely representing or assisting others in falsely representing that purchasing debt consolidation services will result in savings or estimated savings to the purchaser;
- H. Falsely representing or assisting others in falsely representing that debt consolidation services include services that will improve a consumer's credit record, history, or rating;
- I. Falsely representing or assisting others in falsely representing that debt consolidation services include services that will protect against deterioration of a consumer's credit rating, against negative credit history or against derogatory credit information;
- J. Falsely representing or assisting others in falsely representing the benefits that consumers will receive from debt consolidation services;
- K. Falsely representing or assisting others in falsely representing that Defendants or any entity on whose behalf Defendants offer debt consolidation services is authorized by state law to

provide debt consolidation services, that Defendants or any entity on whose behalf Defendants offer debt consolidation services is qualified under state law to provide debt consolidation services, or that Defendants or any entity on whose behalf Defendants offer debt consolidation services is licensed or able to obtain a license required by state law to provide debt consolidation services;

L. Falsely representing or assisting others in falsely representing that Defendants or any entity on whose behalf Defendants offer debt consolidation services adjusts or has adjusted fees for the debt consolidation services to comply with state requirements; and

M. Representing to consumers that Defendant Express Consolidation, Inc. is a nonprofit or tax-exempt entity; *provided*, it shall not be considered a violation of this Order for Express Consolidation, Inc. to respond to a consumer who has asked it to describe its corporate or tax status by (1) stating that Express Consolidation, Inc. is a nonprofit corporation, so long as the State of Florida recognizes Express Consolidation, Inc. as a Florida nonprofit corporation; (2) stating that Express Consolidation, Inc. is a tax-exempt 501(c)(3) organization, so long as the Internal Revenue Service has not revoked its determination that the Express Consolidation, Inc. is an organization exempt from federal income tax under 26 U.S.C. § 501(c)(3); or (3) giving a truthful response that does not directly or indirectly misrepresent the actual corporate or tax status of Express Consolidation, Inc.

For purposes of this Paragraph, “material” means likely to affect a person’s choice of, or conduct regarding, goods or services or a charitable contribution.

II.

PROHIBITION AGAINST DECEPTIVE TELEMARKETING PRACTICES

IT IS FURTHER ORDERED that, in connection with telemarketing, Defendants and their Representatives are hereby restrained and enjoined from engaging in, or assisting others in engaging in:

- A. Falsely representing, expressly or by implication, that Defendants offer, sell or provide contracts with a nonprofit entity; that the services that Defendants offer, sell or provide are services of a nonprofit entity; or that fees for the services that Defendants offer, sell or provide are collected or controlled by a nonprofit entity;
- B. Falsely representing, expressly or by implication, that the only fee charged for Defendants' services is a monthly administrative fee;
- C. Falsely representing, expressly or by implication, that Defendants do not charge an application fee;
- D. Falsely representing, expressly or by implication, that fees represent a deposit or are refunded upon completion of a payment schedule;
- E. Falsely representing, expressly or by implication, the costs of or fees for services;
- F. Falsely representing, expressly or by implication, that services will lower a consumer's monthly payment or total debt;
- G. Falsely representing, expressly or by implication, that purchasing services will result in savings or estimated savings to the purchaser;
- H. Falsely representing, expressly or by implication, that a contract includes services that will improve a consumer's credit record, history, or rating;

I. Falsely representing, expressly or by implication, that a services contract includes services that will protect against deterioration of a consumer's credit rating, against negative credit history or against derogatory credit information;

J. Falsely representing, expressly or by implication, the benefits that consumers will receive from debt consolidation services;

K. Falsely representing, expressly or by implication, that Defendants or any entity on whose behalf Defendants offer services is authorized by state law to provide such services, that Defendants or any entity on whose behalf Defendants offer services is qualified under state law to provide such services, or that Defendants or any entity on whose behalf Defendants offer services is licensed or able to obtain a license required by state law to provide such services;

L. Falsely representing, expressly or by implication, that Defendants or any entity on whose behalf Defendants offer services adjusts or has adjusted fees for the services they offer to comply with state requirements; and

M. Making any other false or misleading statements to induce consumers to pay for services or to induce a charitable contribution in violation of the deceptive practices prohibitions of the Telemarketing Sales Rule, 16 C.F.R. § 310.3.

For purposes of this Paragraph, "material" means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

III.

PROHIBITION AGAINST SUBMITTING BILLING INFORMATION WITHOUT EXPRESS INFORMED CONSENT

IT IS FURTHER ORDERED that Defendants and their Representatives are hereby restrained and enjoined from directly or indirectly receiving payment from a consumer for goods

or services, or causing billing information to be submitted for payment, unless and until the following information has been disclosed to the consumer truthfully, in a clear and conspicuous manner:

- A. The total costs to purchase, receive, or use, and the quantity of, any goods or services for which payment is sought;
- B. All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;
- C. If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy;
- D. If the seller, Defendants or their Representatives makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy; and
- E. If the seller has a policy of not making refunds to debt consolidation service clients unless the clients complete repayment of debts in a particular manner, a statement of all conditions that a client must satisfy to receive such refunds.

For purposes of this Paragraph, "material" means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution. Under this paragraph, "receiving payment from a consumer for goods or services" includes: (i) requesting that a consumer send full or partial payment by check, money order, wire, cash, or any other means; (ii) asking a consumer for billing information that will or could be used to obtain payment for goods or services; or (iii) sending a courier to pick up payment for goods or services offered, or directing a consumer to have a courier pick up payment or authorization for payment.

IV.

PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES

IT IS FURTHER ORDERED that, in connection with telemarketing, Defendants and their Representatives are hereby permanently restrained and enjoined from engaging in, or causing other persons to engage in, or assisting other persons to engage in, violations of the Telemarketing Sales Rule, including but not limited to:

A. Delivering recorded messages to persons who answer an outbound telephone call, disconnecting an outbound telephone call when a person answers without connecting the call to a sales representative, or otherwise failing to connect an outbound telephone call answered by a person to a sales representative within two (2) seconds of the person's completed greeting, *provided, however*, that outbound telephone calls that deliver recorded messages do not violate this provision if the following four (4) conditions are met:

1. The person who initiates the calls employs technology that ensures that no more than three (3) percent of all calls answered by a person are not connected to a sales representative within two (2) seconds of the person's completed greeting, measured per day per calling campaign;
2. The person who initiates the calls allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;
3. Whenever a sales representative is not available to speak with the individual who answers the call within two (2) seconds after the individual's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed; and

4. Defendants and their Representatives retain records, in accordance with 16 C.F.R. § 310.5 (b)-(d), establishing compliance with the preceding three conditions.

B. Initiating any outbound telephone call to a person's telephone number on the National Do Not Call Registry, unless the telephone call is:

1. a solicitation to induce charitable contributions;
2. to a business;
3. to a person who has expressly consented to receive outbound telemarketing calls from the seller on whose behalf the call is made and Defendants can prove that (a) the person's consent is recorded in a written agreement that clearly evidences such person's authorization that calls made by or on behalf of the seller may be placed to that person, and (b) such agreement includes the telephone number to which the calls may be placed and the signature of that person; or
4. to a person who has not stated that he or she does not wish to receive outbound telephone calls from the seller on whose behalf the call is made and Defendants can prove that the person (a) purchased, rented, or leased the seller's goods or services, or engaged in a financial transaction with the seller, within the eighteen (18) months immediately preceding the date of the telephone call; or (b) submitted an inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call;

C. Initiating any outbound telephone call to a person who has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose

goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited; or

D. Initiating any outbound telephone call to a telephone number within a given area code when the applicable annual fee, if any, for access to the telephone numbers within that area code that are on the National Do Not Call Registry has not been paid by or on behalf of the seller on whose behalf the telephone call is made, unless the telephone call is:

1. a solicitation to induce charitable contributions;
2. to businesses, or
3. on behalf of a seller who initiates, or causes others to initiate, telephone calls solely to persons that satisfy the conditions in Subparagraphs IV.B.3 and IV.B.4 of this Order, and does not access the National Do Not Call Registry for any other purpose.

Provided, however, if the Commission promulgates rules that, in whole or part, modify or supersede the Telemarketing Sales Rule, on or after the effective date of any such rules, (i) Defendants shall comply fully and completely with all applicable requirements of such rules and (ii) telephone calls that are permitted by such rules do not constitute a violation of this Order if Defendants satisfy all the applicable requirements of such rules.

V.

DEFENDANTS' OBLIGATION TO MONITOR TELEMARKETING PERSONNEL

IT IS FURTHER ORDERED that any Individual Defendant who directly or indirectly manages, controls or has a majority ownership interest in any business that is engaged in telemarketing is hereby permanently restrained and enjoined from:

A. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies;

B. Failing to take corrective action with respect to any telemarketer or sales representative that is not complying with this Order, which may include training, disciplining, and/or terminating such sales person; and

C. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in telemarketing comply with Paragraphs I - IV of this Order.

Such steps shall include:

1. Monitoring to ensure that lists of phone numbers used to contact customers include only numbers that are authorized to be called under the Telemarketing Sales Rule;
2. Establishing a procedure for receiving and responding to consumer complaints of violations of the Telemarketing Sales Rule;
3. Ascertaining the number and nature of consumer complaints regarding potentially violative telephone calls or sales practices in which each employee or independent contractor is involved;
4. Examining the initial and rebuttal scripts, training materials, notices, contracts and sales materials used by all employees and independent contractors to ascertain whether they comply with Telemarketing Sales Rule; and
5. Monitoring a sample of telemarketing calls by having non-commissioned employees or contractors listen to telemarketers' oral presentations and keep records regarding any misrepresentations;

Provided, however, that this Paragraph does not authorize or require any Defendant to take any action that violates any federal, state, or local law.

**VI.
PROHIBITED DEBT CONSOLIDATION PRACTICES**

IT IS FURTHER ORDERED that Defendants and their Representatives are hereby restrained and enjoined from:

- A. Charging fees for debt consolidation services that are prohibited by or exceed applicable restrictions under state law;
- B. Executing any contract for debt consolidation services that provides for fees that exceed a restriction on such fees imposed by the state in which the person contracting to pay such fees resides;
- C. Failing to comply with a licensing, registration, reporting, audit, insurance, escrow account or trust account requirement for providers of debt consolidation services that has been adopted by a state in which Defendants offer debt consolidation services;
- D. Offering, entering into, or accepting the transfer of, a contract for debt consolidation services with a person when Defendants are not, at the time of the offer, transfer or execution of the contract, in compliance with legal requirements imposed by the state in which the person resides, including any requirements concerning licensing, registration, reporting, audit, insurance, escrow accounts or trust accounts imposed by the state's law regulating debt consolidation services, *provided that* this provision does not prohibit conduct permitted by other provisions of this Order where Express Consolidation, Inc. is, as defined in this Order is qualified to provide debt management services in a state;

E. Conferring or receiving any benefit that would result in Express Consolidation, Inc. failing to operate in conformity with the Florida Not For Profit Corporation Act, Fla. Stat. §§ 617.011-617.2103, including any conduct that would distribute dividends, income, profits or benefits to Express Consolidation, Inc.'s members, directors, or officers except as permitted under the Florida Not For Profit Corporation Act;

F. Failing to deposit any funds that have been paid to Defendants for the purpose of paying creditors of a person for whom Defendants have agreed to provide debt consolidation services in a separate trust account or accounts that are clearly labeled and designated as trust accounts and are used for the purpose of making such payments to creditors; and

G. Failing to maintain in any trust accounts used for debt consolidation services a cash balance that is equal to or greater than the sum of the balances of the unexpended trust money held for each client.

VII.

APPOINTMENT OF TEMPORARY MONITOR

IT IS FURTHER ORDERED that:

A. Gerald Wald, Esq. is hereby appointed as Temporary Monitor for the purpose of monitoring certain payments and accounts, providing notice to existing customers, and performing other duties described more fully below. The Monitor shall be the agent of this Court in acting as Monitor under this Order, and shall be accountable directly to this Court. The Monitor may seek guidance and instructions from the Court whenever needed to perform his or her duties under this Order.

B. The Monitor shall promptly open the following bank accounts for the purpose of implementing the provisions of this Order:

1. An account or accounts designated as the *Transition Trust Account* to hold funds in trust for the payment of client obligations.
2. An account designated as the *Temporary Monitor's Account*.
3. An account designated as the *Fee Account*.

The Monitor shall establish all three accounts with a bank where Defendants currently maintain accounts. The Monitor shall establish the Transition Trust Account and the Temporary Monitor's Account so that these accounts are controlled solely by the Monitor. The Monitor shall establish the Fee Account so that both Defendants and the Monitor have authority to withdraw funds from the account. The Monitor shall establish the Fee Account and the Transition Trust Account so that funds may be transferred between these accounts and accounts used by Defendants for debt consolidation services through online banking.

C. The Monitor shall:

1. Verify that Defendants have complied with their obligation to transfer sufficient funds to the Transition Trust Account to satisfy Subparagraph VIII.B;
2. Verify that, from the date that the transfer described in Subparagraph VIII.D is completed until the Monitor completes his or her duties, the funds in the Transition Trust Account equal or exceed the unexpended trust money received by Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc. and Debt Management Counseling Center, Inc.;
3. Monitor Defendants' compliance with their obligations to deposit payments from existing clients into the Transition Trust Account and Fee Account, as described below;

4. Approve the release of trust funds to Defendants or other debt consolidation service providers for the purpose of making distributions to creditors of existing clients;
5. Ensure that funds in the Transition Trust Account are transferred to Express Consolidation, Inc. in a manner that allows distributions on behalf of existing clients to be made on time;
6. Send the notices described below in Subparagraphs IX.C and IX.D, receive and review client responses to the notices;
7. Monitor Defendants' implementation of the responses of existing clients to the notices described below;
8. Monitor the transfer of the debt management plans of existing clients, client records and funds pursuant to this Order;
9. Within seventy (70) days of the date that this Order is entered, and otherwise upon request from the Court, prepare, serve and file with this Court a report describing the funding of the accounts opened by the Monitor to implement this Order, the distribution of notices required by this Order, the implementation of responses to those notices, and Defendants' compliance with this Order;
10. Select an Independent Auditor pursuant to Paragraph XVII; and
11. At the conclusion of his or her duties, disburse the remaining funds, if any, in the Temporary Monitor's Account and Transition Trust Account in accordance with Paragraph XV.C.2, and file with the Court a report describing how the funds in these accounts were used by the Monitor.

D. The Monitor shall have power to enter into agreements in connection with the performance of his or her duties, including, but not limited to, the retention and employment of investigators, attorneys, accountants, and technical specialists of the Monitor's choice to assist, advise, or represent the Monitor.

E. The Monitor shall serve without bond or other security.

F. Defendants and their Representatives shall fully cooperate with and assist the Monitor with all reasonable requests of the Monitor relating to implementation of this Order, including giving the Monitor or his or her agents access to documents and personnel of Express Consolidation, Inc., Randall L. Leshin, P.A., and Debt Management Counseling Center, Inc., related to the Monitor's duties under this Order. This cooperation and assistance shall include, but not be limited to, providing information to the Monitor that the Monitor deems necessary in order to exercise the authority and discharge the responsibilities of the Monitor under this Order, and providing any password, key, combination or security code required to access to such information from a computer, electronic file, or other storage place or medium to which access is restricted.

G. The Monitor shall complete his or her duties within one hundred and fifty days (150) after the date that this Order is entered, but any party or the Monitor may request that the Court extend the Monitor's term due to unforeseen circumstances or other good cause.

VIII.

FUNDING OF TRANSITION TRUST, FEE AND TEMPORARY MONITOR'S ACCOUNTS

IT IS FURTHER ORDERED that:

A. Defendant Randall L. Leshin shall:

1. Within two (2) business days of receiving notice that this Stipulated Order has been approved by the Commission, give instructions to liquidate and transfer to the Transition Trust Account three hundred and fifty-seven thousand dollars (\$357,000) that is not part of the trust accounts of Debt Management Counseling Center, Inc. (SunTrust bank account with account number ending in 3255), the trust accounts of Randall L. Leshin, P.A. (SunTrust bank accounts with account numbers ending in 1248, 1275 and 2278), or the Holding Account; and
 2. Complete the transfer of three hundred and fifty-seven thousand dollars (\$357,000) to the Transition Trust Account pursuant to this Subparagraph within twenty-one (21) days after the date that this Stipulated Order has been approved by the Commission or two (2) business days after the Transition Trust Account is opened, whichever is later; *provided, however*, if the transfer cannot be completed within the time period set forth herein, Randall L. Leshin may file a motion with the Court to show good cause for an extension of time to complete such transfer;
- B. Defendants shall, within five (5) days of the entry of this Order:
1. Deposit into the Transition Trust Account (a) sixty-three thousand dollars (\$63,000) and all funds that any of the Defendants or Debt Management Counseling Center, Inc., hold in trust for consumers participating in debt management plans;
 2. If necessary, direct the transfer of additional funds to the Transition Trust Account so that the total of (a) the three hundred and fifty-seven thousand dollars (\$357,000) that Defendant Leshin has transferred or has instructed to be

transferred to the Transition Trust Account; and (b) all other assets that Defendants have transferred to the Transition Trust Account is equal to or exceeds the total unexpended trust money paid to Randall L. Leshin, Randall L. Leshin, P.A. and Debt Management Counseling Center, Inc., as of the date of the transfer minus seven hundred twenty-five thousand dollars (\$725,000); and

C. Within two (2) days of the date that this Order is entered, Defendants shall make available to the Monitor:

1. Any and all client and account records needed for the Monitor to determine that the total amount of the funds that Defendants have transferred to the Transition Trust Account are at least equal to the total unexpended trust money paid to Randall L. Leshin, Randall L. Leshin, P.A. and Debt Management Counseling Center, Inc. as of the date of the transfer minus seven hundred twenty-five thousand dollars (\$725,000); and
2. Client and account records concerning payments that Defendants expect to receive from existing clients and expect to make to creditors during the one hundred and twenty (120) day period following the date that this Order is entered.

D. The Monitor will evaluate whether Defendants have transferred assets to the Transition Trust Account in accordance with Subparagraphs A and B and promptly give written notice to the Commission and Defendants when the Monitor has determined that the total amount of the funds that Defendants have transferred to the Transition Trust Account are equal to or exceed the total unexpended trust money paid to Randall L. Leshin, Randall L. Leshin, P.A. and Debt Management Counseling Center, Inc. minus seven hundred twenty-five thousand dollars

(\$725,000). Upon the Monitor's issuance of a written notice that he or she has determined that the total amount of the funds that Defendants have transferred to the Transition Trust Account are equal to or exceed the total unexpended trust money paid to Randall L. Leshin, Randall L. Leshin, P.A. and Debt Management Counseling Center, Inc. minus seven hundred twenty-five thousand dollars (\$725,000), the provisions of the Stipulated Interim Injunction entered on January 29, 2007, restricting the transfer of assets in the Holding Account are lifted and Defendants shall, within one business day of receiving written notice from the Monitor, (1) direct the transfer of seven hundred twenty-five thousand dollars (\$725,000) of the funds in the Holding Account to the Transition Trust Account; and (2) direct the transfer of all other funds in the Holding Account to the Temporary Monitor's Account.

E. Within two (2) days after payments that Defendants receive from existing clients are included in the available balance of the bank account(s) that receives such payments, Defendants shall:

1. deposit in the Transition Trust Account the portion of these payments that represent funds to pay existing clients' creditors; and
2. deposit in the Fee Account the portion of these payments that represents fees.

F. Defendants shall continue to deposit payments sent by the existing clients as prescribed by this Subparagraph until (i) one hundred and thirty-five (135) days from the date that this Order is entered for payments from existing clients who agree to contracts with or are transferred to Express Consolidation, Inc.; and (ii) for all other clients, until the Monitor determines that Defendants have complied with their obligation to cancel or transfer the client's debt management plan in accordance with Paragraphs IX and X.

IX.
NOTICES TO EXISTING CLIENTS.

IT IS FURTHER ORDERED that existing clients who have signed contracts with Randall L. Leshin or Randall L. Leshin, P.A., shall receive notice of this settlement and the opportunity to continue to have their debt management contracts serviced by Express Consolidation, Inc., cancel their debt management contracts, or obtain services from a different provider as follows:

A. *Specified States.* Unless officials of the relevant state have unambiguously stated in writing that Express Consolidation, Inc. is permitted to offer debt consolidation services to residents of that state who are currently being serviced by Express Consolidation, Inc. for debt consolidation services, Defendants shall, under the supervision of the Monitor, take the following action with respect to existing clients who reside in Michigan, New York and Vermont and any state that has directed one or more of the Defendants to transfer existing clients who reside in the state to debt consolidation service providers which are licensed, registered or otherwise qualified to operate in the state:

1. Within ten (10) days after the date this Order is entered, send existing clients who reside in these states a notice that will inform these clients that their debt management plans will be transferred to debt consolidation service providers that are legally qualified to provide such services and that the clients may cancel their contract for debt consolidation services at any time.
2. Upon receipt of a notice that an existing client in these states wishes to terminate his or her contract for debt consolidation services, notify the Monitor, cease all collections from the client, and complete the disbursement of any funds

Defendants have received for payment of creditors but have not disbursed when Defendants receive notice of the cancellation.

3. Within thirty (30) days of the date of this Order, Defendants shall transfer the debt management plans of existing clients in these states to debt consolidation services providers that are licensed or, if the state does not require licensing, are otherwise legally qualified to provide such services. The providers will be identified by the Commission.

B. Defendants shall:

1. Within ten (10) days after the date this Order is entered, provide a copy of this Order to state authorities in any state where one or more of the Defendants (a) has a duty to report orders, judgments, injunctions, enforcement actions, or regulatory decisions, or settlement of a suit, claim or other civil action, or (b) has a duty to update or correct responses to prior state requests for information on orders, judgments, injunctions, enforcement actions, regulatory decisions, or settlement of a suit, claim or other civil action;
2. No later than thirty (30) days after the date that this Order is entered, identify to the Monitor and the Commission (a) the states in which Express Consolidation, Inc. maintains that it is qualified to provide debt management services and (b) the states in which Express Consolidation, Inc. has a pending application that may result in Express Consolidation, Inc. being qualified to provide debt management services sixty (60) days from the date that this Order is entered; and

3. Shall promptly provide the Monitor and the Commission with copies of any documents from state officials stating that Express Consolidation, Inc. is permitted to offer debt consolidation services to residents of that state who are currently being serviced by Express Consolidation, Inc. based on a pending application for a license.

C. *States Where Express Consolidation, Inc. is Not Qualified to Provide Services.* Sixty-one (61) days after the date that this Order is entered, the Monitor shall send a notice to existing clients who have signed agreements with Randall L. Leshin or Randall L. Leshin, P.A. for debt consolidation services and reside in states in which Express Consolidation, Inc. is not qualified to provide debt management services. The notice shall inform these existing clients of the settlement and state that the existing clients may (a) cancel their Consolidation Services Agreement immediately; or (b) agree to a contract with a debt consolidation services provider identified by the Commission, by sending a form to the Monitor indicating their preference on or before the 120th day following the date this Order. The notice shall also state that if the existing clients do not send such a form to the Monitor on or before the 120th day following the date this Order is entered, their debt management plan will be transferred to the debt consolidation services provider identified by the Commission.

D. *States Where Express Consolidation, Inc. is Qualified to Provide Services.* Sixty-one (61) days after the date that this Order is entered, the Monitor shall send a notice to existing clients who have signed agreements with Randall L. Leshin or Randall L. Leshin, P.A. for debt consolidation services and who reside in states in which Express Consolidation, Inc. is qualified to provide debt management services. The notice shall inform these existing clients of the

settlement and state that the existing clients may (a) cancel their contract for debt consolidation services immediately; (b) agree to a contract with a debt consolidation services provider identified by the Commission; or (c) agree to a contract with Express Consolidation, Inc. by sending a form to the Monitor indicating their preference on or before the 120th day following the date this Order. The notice shall also state that if the existing clients do not send such a form to the Monitor on or before the 120th day following the date this Order is entered, their debt management plan will be transferred to Express Consolidation, Inc.

E. *Content of Notices.* The Commission shall prepare the notices to existing clients described in this Paragraph. The notices will describe the Commission's lawsuit against Defendants and state that the appointment of the Monitor and the notice are part of a settlement between the Commission and Defendants. The notices will state that Defendants have not admitted to any violations of the law, describe material terms of the settlement, describe the options to terminate or transfer, and contain a statement concerning the potential risks of terminating a debt management plan. The notice will advise the clients that the fees for existing clients whose fees exceeded state requirements has been reduced to conform to such requirements. Defendants shall have an opportunity to provide comments to the Commission and the Commission shall consider and incorporate such comments as it deems appropriate. The Commission will ultimately decide upon the content and form of the notice consistent with the parameters described above.

F. The Defendants shall reimburse the Monitor for all costs incurred by the Monitor or his or her agents in printing, mailing and providing return postage for the notices to existing clients described under this paragraph.

G. During the period from sixty-one (61) to one hundred and twenty (120) days following the date that this Order is entered, Defendants may solicit existing clients of Randall L. Leshin and Randall L. Leshin, P.A. who reside in states where Express Consolidation, Inc. is qualified to provide debt management services to enter into contracts for debt consolidation services with Express Consolidation, Inc.

H. Within fifty (50) days of the date of entry of this Order, Defendants shall provide to the Commission copies of any and all letters, advertising materials, scripts or other documents that Defendants intend to use in offering existing consumers contracts with Express Consolidation, Inc. During the period from 50 to 120 days from the entry of this Order, Defendants shall, every fifteen (15) days, provide to the Commission copies of any and all additional or modified letters, advertising materials, scripts or other documents that Defendants intend to use in offering existing consumers contracts with Express Consolidation, Inc. but have not produced previously.

I. For purposes of this Paragraph and Paragraph X, Defendants have completed their obligation to “transfer” the debt management plan of an existing client to another debt consolidation services provider when Defendants have provided the transferee with sufficient records and information to contact the existing client and service the client’s debt management plan, and made arrangements so that any additional client payments, including fees, will be paid to the transferee as soon as the transferee has agreed to accept the payments and servicing of the debt management plan.

X.

IMPLEMENTATION OF EXISTING CLIENT RESPONSES TO NOTICES.

IT IS FURTHER ORDERED that:

A. If the Monitor receives a response to a notice in which an existing client states that he or she elects to cancel their contract for debt consolidation services, the Monitor shall promptly notify Defendants and, within three (3) days of receiving such notice, Defendants shall discontinue all collections from that client.

B. If the Monitor receives a response to the notices from an existing client who elects to agree to a contract with the debt consolidation services provider identified by the Commission, the Monitor shall promptly notify Defendants and Defendants, under the supervision of the Monitor, shall promptly transfer the debt management plan to the selected provider. For purposes of this Subparagraph, "transfer" is defined as set forth in Subparagraph IX.I.

C. Within one hundred and twenty-five (125) days after the date that this Order is entered, the Monitor shall create a list of the existing clients to whom the Monitor sent the notice described in Subparagraphs IX.C and IX.D that identifies the responses received from each existing client and the clients from whom no response was received.

D. If the Monitor receives a response to the notices from an existing client who elects to agree to a contract with Express Consolidation, Inc., Express Consolidation, Inc. shall service the client in accordance with its obligations under this Order and the contract, and payments from such clients received more than one hundred and thirty-five (135) days after the date of entry of this Order shall be deposited in the accounts of Express Consolidation, Inc.

E. For those existing clients to whom the Monitor sent the notice described in Subparagraphs IX.C and IX.D but from whom the Monitor did not receive a response electing a valid option within one hundred and twenty days (120) days after the date this Order is entered, Defendants shall:

1. Transfer to Express Consolidation, Inc. the debt management plans of all such clients who reside in a state where Express Consolidation, Inc. is qualified to provide debt management services, effective one hundred and thirty (130) days after the date this Order is entered; and
2. Transfer to the debt consolidation services provider identified by the Commission the debt management plans of all such clients who reside in a state where Express Consolidation, Inc. is not qualified to provide debt management services no later than one hundred and fifty (150) days after the date this Order is entered.

For purposes of this Subparagraph, “transfer” is defined as set forth in Subparagraph IX.I.

F. Where the debt management plan of an existing client is to be cancelled or transferred to the debt consolidation services provider identified by the Commission, Defendants shall be responsible for properly disbursing to creditors any funds Defendants have received from these clients for payment of creditors before Defendants received notice of the termination or while arrangements are being made for the debt consolidation services provider identified by the Commission to receive the existing client’s payments. This provision does not apply if Defendants and the debt consolidation services provider to whom the existing client has been or will be transferred have entered into a written agreement to the contrary concerning responsibility for disbursing such payments to creditors.

G. The legal obligation to make refunds to existing clients is not abrogated by transfer of the debt management plans of existing clients pursuant to this Stipulated Order. A debt consolidation services provider that assumes responsibility for the debt management plans of existing clients pursuant to this Stipulated Order may agree to assume all or part of the legal

obligation to make refunds to existing clients whose plans have been transferred; however, Defendants may not seek or receive any other concessions or consideration from such a provider in connection with the transfer of existing clients.

XI.

USE OF TRANSITION TRUST, FEE AND TEMPORARY MONITOR'S ACCOUNTS

A. Defendants shall not have access to funds in the Transition Trust Account except with the approval of the Monitor, and the Monitor shall:

1. Periodically transfer or approve the transfer of funds in the Transition Trust Account to Express Consolidation, Inc. or other debt consolidation services providers serving existing clients as needed to allow Defendants or other providers to make distributions to creditors on behalf of such clients; and
2. By no later than one hundred and fifty (150) days after the date of this Order, transfer to Express Consolidation, Inc. any funds in the Transition Trust Account that are attributable to payments from existing clients who have agreed to contracts with or have been transferred to Express Consolidation, Inc. pursuant to Paragraphs X.D and X.E.1.

B. Defendants shall control funds in the Fee Account subject to the following limitations:

1. Defendants shall transfer a total of two hundred and forty thousand dollars (\$240,000) from the Fee Account to the Temporary Monitor's Account by transferring twenty thousand dollars (\$20,000) no later than the close of business on the first Monday after the date that this Order is entered, and transferring the same amount no later than the close of business on each subsequent Monday until

the amount transferred totals two hundred and forty thousand dollars (\$240,000);
and

2. If the Monitor reasonably determines that Defendants have failed to comply with their obligation to deposit funds for payment of the existing clients' creditors in the Transition Trust Account or have collected excessive or improper fees from existing clients, the Monitor may withdraw from the Fee Account the amount of funds that the Monitor reasonably determines has been improperly allocated to the Fee Account or that represents excessive or improper fees. If Defendants dispute that the Monitors' action is justified under this paragraph and are unable to resolve the dispute within five (5) business days, Defendants may file a motion with the Court for review of the Monitor's action and seek return of all or part of the fees withdrawn by the Monitor.

C. The Temporary Monitor's Account shall be used to pay approved requests for compensation and fees of the Monitor and his or her agents. The Monitor shall file with the Court and serve on the parties periodic requests for the payment of reasonable compensation for personnel hired by the Monitor to perform his or her duties pursuant to this Order and for the cost of any out-of-pocket expenses incurred by the Monitor or his or her agents. The first request for approval of such payments shall be filed no more than sixty (60) days after the date of entry of this Order. The Monitor shall not increase the Monitor's fee rate without prior approval of the Court. Upon approval by the Court of such requests for payment of compensation and expenses, the Monitor shall pay the amount approved from the Temporary Monitor's Account.

XII.

TRANSFER OF DMCCI CONTRACTS TO EXPRESS CONSOLIDATION, INC.

IT IS FURTHER ORDERED that Defendants shall transfer the contracts of existing clients who have contracts with Debt Management Counseling Center, Inc. ("DMCCI") to Express Consolidation, Inc., in accordance with the following conditions:

- A. Defendants shall complete the transfer of these contracts and notify the existing clients who have contracts with DMCCI within ten (10) days after the date this Order;
- B. Transfer of the contracts shall not alter the ability of these existing clients to cancel the contracts; and
- C. Defendants shall provide the text of the notice to the Commission in advance for comment and Defendants shall consider and incorporate such comments as they deem appropriate.

XIII.

TRANSFER OF EXPRESS CONSOLIDATION, INC. CONTRACTS IN THE EVENT OF ADVERSE IRS DETERMINATION

IT IS FURTHER ORDERED that, if the Internal Revenue Service issues a final IRS determination that Express Consolidation, Inc. does not qualify for exemption from federal income tax under 26 U.S.C. § 501(c)(3), Defendants shall transfer clients who have contracts with Express Consolidation, Inc. and reside in states in which the requirements for Express Consolidation, Inc. to offer or provide debt management services include a requirement that it be exempt from income tax under 26 U.S.C. § 501(c)(3). The transfer will be governed by the following schedule:

- A. Within fifteen (15) days of the date of the final IRS determination, Defendants shall notify clients who reside in states covered by this provision that the clients have the option of: (a)

canceling their contract for debt consolidation services immediately; or (b) transferring their debt management plan to an independent provider qualified to provide debt consolidation services in their state.

B. Within sixty (60) days of the date of the final IRS determination, Express Consolidation, Inc. shall transfer to an independent provider that is qualified to provide debt consolidation services the debt management plans of those consumers who have not responded to the notices by stating that they wish to terminate their contract for debt consolidation services immediately. If state authorities require transfer or termination of such debt consolidation services contracts within a shorter period of time, Express Consolidation, Inc. shall transfer or terminate the debt consolidation services contract within the period prescribed by the state authorities.

C. Defendants shall notify the Commission of the final IRS determination within three (3) days of receipt of the final IRS determination. Within ten (10) days of the date of the determination, Defendants shall provide the Commission with their plans for notifying clients whose debt management plans are affected by this provision, a copy of the notice to be sent, and a description of the arrangements that Defendants have made to transfer the debt management plans to independent providers that are qualified to provide debt consolidation services.

D. If state officials responsible for enforcing a state's requirement that Express Consolidation, Inc. be a tax exempt organization have unambiguously stated in writing that the state will allow some of the existing clients in that state to continue to be serviced by Express Consolidation, Inc., despite the final IRS determination, Defendants are not required to transfer those existing clients covered by the state officials' decision.

E. As used in this Paragraph, "final IRS determination" means an Internal Revenue Service

decision that is final and not appealable and includes a settlement or determination for which the time to pursue an appeal has expired.

XIV.
DEFENDANTS' REAFFIRMATION OF FINANCIAL DISCLOSURES

IT IS FURTHER ORDERED that, within five (5) business days after this Order is signed on behalf of Defendants, each Defendant must reaffirm and attest to the truthfulness, accuracy and completeness of Defendants' Financial Statements. The parties to this agreement acknowledge and agree that:

- A. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of Defendants' Financial Statements and Defendants' reaffirmation of those financial statements.
- B. By agreeing to this Order, the Individual Defendants authorize the Commission to verify all information provided on their financial disclosure forms with all appropriate third parties, including, but not limited to, financial institutions.
- C. In accordance with 31 U.S.C. § 7701, Defendants have been required to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), and these numbers may be used for purposes of collecting and reporting on any delinquent amount arising out of this Stipulation and Order.

XV.
MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Defendants Randall L. Leshin, Randall L. Leshin, P.A., and Express Consolidation, Inc. are jointly and severally liable to the Commission for forty million dollars (\$40,000,000) and the Commission is awarded a monetary judgment in that amount against Defendants Randall L. Leshin, Randall L. Leshin, P.A., and Express Consolidation, Inc.

B. Defendant Charles Ferdon is liable to the Commission for three hundred and eighty-thousand dollars (\$380,000) and the Commission is awarded a monetary judgment in that amount.

C. Funds collected to satisfy the monetary judgments set forth above shall be used for consumer redress or disgorgement as provided for in Paragraph XVI of this Order. These monetary judgments shall be partially satisfied as follows:

1. Charles Ferdon shall pay the sum of two thousand four-hundred dollars (\$2,400) to the Temporary Monitor's Account within five (5) business days of the date that the Temporary Monitor's Account is established. This payment shall be by certified check or other guaranteed funds, or by wire transfer in accordance with directions provided by the Monitor.
2. Upon completion of his or her duties, the Monitor shall pay to the Commission (i) any funds in the Temporary Monitor's Account that have not been used to pay expenses of the Monitor; and (ii) any funds in the Transition Trust Account that have not been used and are not needed to pay consumer obligations.

D. With the exception of the collection of the funds described in Subparagraph XV.C, the monetary judgments set forth in Subparagraphs XV.A and XV.B are stayed subject to the following conditions:

1. If, upon motion by the Commission, this Court finds that any Defendant has failed to comply with the obligations relating to transfer of funds to the Transition Trust Account pursuant to Subparagraphs VIII.A and VIII.B, or that Defendants failed to complete the transfers to the Temporary Monitor's Account required in Subparagraph XI.B.1, the Court shall lift the stay of the monetary judgment as to the Defendant or Defendants that failed to comply with these obligations;
2. If, upon motion by the Commission, this Court finds that any Defendant, in executing one or more of Defendants' Financial Statements, has (i) materially misstated the value of any asset that should have been disclosed in the statement(s) that the Defendant executed; (ii) materially misstated one or more of Defendants' financial condition by failing to disclose any asset that should have been disclosed in the statement(s) that the Defendant executed; or (iii) has made any other material misstatement or omission in one or more of Defendants' Financial Statements, the Court shall lift the stay as to the Defendant or Defendants whose Financial Statements contain such misstatements or omissions.

Upon lifting the stay, the full amount of the judgment, less any amount previously collected to pay the judgment, shall become immediately due and payable by any Defendant for whom the stay is lifted with interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, on the unpaid balance.

E. Defendants agree that the facts alleged in the Amended Complaint establish all elements necessary to sustain an action pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A) and the parties' intend that this Stipulated Order be accepted as a final

adjudication that the monetary judgment satisfies those elements in any subsequent proceedings to collect the monetary judgment including, but not limited to, a nondischargeability complaint in any bankruptcy case. Defendants waive any right to contest any of the allegations in the Amended Complaint in any subsequent litigation to collect amounts due pursuant to this Stipulated Order including, but not limited to, a nondischargeability complaint in any bankruptcy proceeding. This provision shall not be interpreted to constitute an admission by any of the Defendants of the truth of the allegations in the Amended Complaint.

F. Defendants acknowledge and agree that (1) this monetary judgment is not a fine, penalty, punitive assessment or forfeiture; and (2) any proceedings to lift the stay of the monetary judgment would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that may be initiated to enforce this Order.

G. Defendants acknowledge and agree that all money paid to satisfy the monetary judgment under this Paragraph is irrevocably paid for purposes of settlement between the parties, and Defendants relinquish all interests, rights, and title to such money to the fullest extent permitted by law.

H. In the event that the stay of monetary judgment is lifted with respect to one or more of Defendants, the Defendant or Defendants for whom the stay is lifted must (1) provide the Commission with their federal and, if applicable, state tax returns for the preceding two years, and complete new financial disclosure forms fully and accurately within ten business days of receiving a request from the Commission to do so; and (2) cooperate fully with the Commission and its agents in all attempts to collect the judgment.

**XVI.
REDRESS FUND**

IT IS FURTHER ORDERED that funds paid to the Commission or its designated agent to satisfy the monetary judgment shall be deposited into a fund, administered by the Commission, to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds to such other equitable relief (including consumer education remedies) as it determines to be reasonably related to the purposes of this settlement. All funds not so used for such equitable relief shall be paid to the United States Treasury. Defendant shall have no right to challenge the Commission's choice of remedies under this Order.

**XVII.
MONITORING BY INDEPENDENT AUDITOR**

IT IS FURTHER ORDERED that:

- A. By (i) the one-hundred and twentieth (120) day after the date this Order is entered; or (ii) the date on which the Monitor has completed transferring funds from the Transition Trust Account to Express Consolidation, Inc., whichever is later, Defendants shall execute an Independent Auditor agreement with an individual who has been selected by the Monitor to serve as the Independent Auditor under this Paragraph and has agreed to:
1. Regularly examine the documents concerning Defendants' trust account(s), payments to creditors, and compliance with state law;

2. Provide written reports to the Commission in which the Auditor, acting reasonably and appropriately:
 - (a) Reports whether the trust account or accounts that Defendants have used for debt consolidation services have maintained cash balances equal to or greater than the sum of the balances of the unexpended trust money held for each client whose payments for debt consolidation services are kept in the trust account or accounts;
 - (b) Reports whether Defendants have made timely payments to clients' creditors during the last sixty (60) days;
 - (c) Identifies the states of residence of persons who Defendants or their Representatives have contacted to offer debt consolidation services during the last sixty (60) days;
 - (d) Identifies the states of residence of the individuals with whom Defendants have contracts for debt consolidation services;
 - (e) Reports on whether Defendants have complied with regulatory requirements in the states identified in Subparagraph XVII.A.2(c) and (d);
and
 - (f) Identifies any states in which Defendants are attempting to obtain a license to offer or provide debt consolidation services.
3. Provide such reports to the Commission every two months beginning one hundred and eighty (180) days following the date that this Order is entered and concluding with a final report three (3) years after the date that this Order is entered;

4. Provide immediate written notice to Defendants and the Commission if the Auditor determines that either of the following conditions exist:
 - (a) Any trust account in which Defendants deposit payments for debt consolidation clients' creditors has a cash balance that is less than the sum of the balances of the unexpended trust money held for each client whose payments are kept in the trust account; or
 - (b) Defendants have failed to make payments to creditors on behalf of clients who have made payments to Defendants for debt consolidation services within thirty (30) days of receiving payment from the client; and
5. Notify Defendants and the Commission if, upon receipt of a notice pursuant to Subparagraph XVII.A.4, (a) Defendants have demonstrated to the Auditor that the Auditor's notice was issued in error, or that the condition has been cured and Defendants were not at fault in creating the condition identified in the Auditor's notice; or (b) Defendants have failed to cure the condition identified in the Auditor's notice within five (5) days of Defendants receiving the notice.

B. Upon motion by the Commission based on a notice or notices issued by the Auditor pursuant to Subparagraph XVII.A.4, the Court shall require Defendants to transfer all clients to an independent provider or providers that are qualified to provide debt consolidation services within sixty (60) days if:

1. The Court finds that the Auditor did not issue the notice in error and that Defendants had the ability to cure the condition that prompted the notice but

failed to cure the condition within five (5) business days of receiving the Auditor's notice; or

2. Regardless of whether conditions have been cured within five (5) business days, the Court finds that there have been three or more instances in which Defendants have failed to make payments to creditors on behalf of clients within thirty (30) days of receiving payment from the client without a reasonable justification for failing to make timely payments.

This Paragraph does not affect the Commission's authority to pursue any other remedy to enforce this Order.

C. The Commission and Defendants may provide the Monitor with input on the selection of the Auditor. The Auditor shall not be an employee or agent of Defendants other than for purposes of performing the duties set forth in this Order and shall not be involved in the business of Defendants except for performing such duties.

D. The Auditor shall be a person with experience necessary to perform his or her duties. If Defendants or the Commission have a reasonable objection to the performance of the Auditor, Defendants or the Commission may petition the Court for appointment of a replacement Auditor, with input from the Commission and Defendants, if either should desire to provide such input;

E. Defendants shall compensate the Auditor for his or her services and the services of such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to the Auditor to perform his or her duties, at reasonable and customary terms and conditions, including payment of reasonable out-of-pocket expenses incurred in the performance of the Auditor's duties.

F. Defendants shall:

1. Provide the Auditor, upon request, with access to any documents related to Defendants' trust account(s), payments to creditors, compliance with state law, complaints or notices concerning the timing of payments to creditors, Defendants' claims that conditions identified by the Auditor have been cured, or other documents relating to the Auditor's duties under this Order; and
2. Make Defendants' personnel available to the Auditor to answer questions related to Defendants' trust account(s), payments to creditors, compliance with state law, Defendants' claims that conditions identified by the Auditor have been cured, or other documents relating to the Auditor's duties under this Order.

XVIII.

COMPLIANCE MONITORING BY THE FTC

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

- A. Within ten (10) business days of receipt of written notice from a representative of the Commission, each Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation *provided that* the Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c);

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

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. posing as consumers and suppliers to: Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants without the necessity of identification or prior notice; and

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

Provided, however, that nothing in this Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

XIX.

COMPLIANCE REPORTING BY DEFENDANTS

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

A. For a period of five (5) years from the date of entry of this Order,

1. Defendants Randall L. Leshin and Charles Ferdon each shall notify the Commission of the following:

- (a) Any changes in their residence, mailing addresses, and telephone numbers within ten (10) days of the date of such change;
- (b) Any changes in their employment status (including self-employment), and any change in their ownership of any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the notifying Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the notifying Defendant's duties and responsibilities in connection with the business or employment; and
- (c) Any changes in their name or use of any aliases or fictitious names;

and

2. Defendants shall notify the Commission of any changes in corporate structure of the Corporate Defendants or any business entity that they directly or indirectly control, or have an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which Defendants learn less than thirty (30) days prior to the date such

action is to take place, Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred and eighty (180) days after the date of entry of this Order, each Defendant shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For Defendants Randall L. Leshin and Charles Ferdon:
 - a. Their then-current residence address, mailing addresses, and telephone numbers;
 - b. Their then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and their title and responsibilities for each such employer or business; and
 - c. Any other changes required to be reported under Subparagraph XIX.A.
2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph XXI; and
 - b. Any other changes required to be reported under Subparagraph XIX.A.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FTC v. Leshin, S.D. Fla. Civil Action No. 06-61851

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendants.

XX.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendants, Defendants' agents, employees, officers, corporations, successors, and assigns, any business in which Randall L. Leshin or Charles Ferdon is the majority owner or otherwise controls the business, and those persons in active concert or participation with one or more Defendants who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records in connection with the sale of debt consolidation services or telemarketing:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, recorded messages or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraph XXI, and all reports submitted to the Commission pursuant to Paragraph XIX.

XXI.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. *Corporate Defendants:* Corporate Defendants must deliver a copy of this Order to all of their principals, officers, directors, and managers. The Corporate Defendants also must deliver copies of this Order to all of their employees, agents, and representatives who engage in conduct related to telemarketing or debt consolidation services. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities;

B. *Individual Defendants as Control Persons:* For any business that an Individual Defendant controls, directly or indirectly, or in which that Individual Defendant has a majority ownership interest, the Individual Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. The Individual Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to telemarketing or debt consolidation services. For current personnel, delivery shall be within five (5) days of service of this Order upon the Individual Defendant. For new

personnel, delivery shall occur prior to them assuming their responsibilities;

C. *Individual Defendants as Employees or Non-Control Persons:* For any business in which an Individual Defendant is not a controlling person of the business, but otherwise engages in conduct related to debt consolidation services or telemarketing, the Individual Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

D. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

XXII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

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

XXIII.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, cooperate in good faith with the FTC.

XXIV.

ENTRY OF FINAL JUDGMENT AND RELEASE FROM STIPULATED INTERIM ORDER

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Civil Procedure 54(b), the Court finds there is no just reason for delay in entering this Order as a final judgment and the

Clerk of Court immediately shall enter this Order as a final judgment as to Defendants Randall L. Leshin, Charles Ferdon, Express Consolidation, Inc., and Randall L. Leshin, P.A.; and


IT IS FURTHER ORDERED that, with respect to Defendants Randall L. Leshin, Charles Ferdon, Express Consolidation, Inc., and Randall L. Leshin, P.A., this final judgment supersedes the provisions of the Stipulated Interim Injunction entered on January 29, 2007, and these Defendants are relieved from the obligation to comply with the Stipulated Interim Order with the exception that, until the Monitor determines that Defendants have satisfied their obligation to transfer assets under Paragraph VIII.D of this Order, Defendants shall not transfer assets from the Holding Account except for disbursements to consumers who contracted for debt consolidation services prior to February 2, 2007, and have completed debt consolidation services, as set forth in Paragraph VI.D of the Stipulated Interim Order.

XXV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 5 day of May,


URSULA UNGARO
UNITED STATES DISTRICT JUDGE

Case 0:06-

SO STIPULATED AND AGREED:

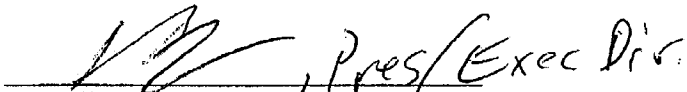
FOR THE PLAINTIFF FEDERAL TRADE COMMISSION:



Date: 4/23/08

Michael E. Tankersley (Bar No. A5500895)
Philip P. Tumminio (Bar No. A5501062)
Karen S. Hobbs (Bar No. A5501155)
Attorney E-mail addresses: mtankersley@ftc.gov,
khobbs@ftc.gov; ptumminio@ftc.gov
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm 288
Washington, DC 20580
Telephone: (202) 326-2991
Facsimile: (202) 326-3395


**FOR DEFENDANT RANDALL L. LESHIN, EXPRESS CONSOLIDATION, INC.
AND RANDALL L. LESHIN, P.A.:**



Date: 3/13/08

Randall L. Leshin, INDIVIDUALLY AND AS
PRESIDENT AND EXECUTIVE DIRECTOR OF
EXPRESS CONSOLIDATION, INC. AND OF RANDALL L. LESHIN, P.A,

FOR DEFENDANT CHARLES FERDON:



Date: 3/13/08

CHARLES FERDON

Date: _____

Roger A. Colaizzi (admitted pro hac vice)
Counsel for Randall L. Leshin, Express Consolidation, Inc.,
Randall L. Leshin, P.A., and Charles Ferdon
Theodore W. Atkinson (admitted pro hac vice)
Mary Ellen R. Himes (admitted pro hac vice)
VENABLE LLP
575 7th Street, N.W.
Washington, D.C. 20004
Telephone: (202) 344-8051
Fax: (202) 344-8300
Email: racolaizzi@venable.com

SO STIPULATED AND AGREED:

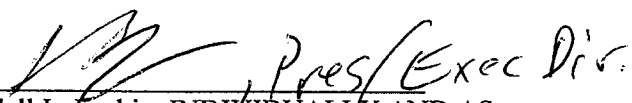
FOR THE PLAINTIFF FEDERAL TRADE COMMISSION:

Date: _____

Michael E. Tankersley (Bar No. A5500895)
Philip P. Tumminio (Bar No. A5501062)
Karen S. Hobbs (Bar No. A5501155)
Attorney E-mail addresses: mtankersley@ftc.gov,
khobbs@ftc.gov; ptumminio@ftc.gov
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm 288
Washington, DC 20580

Telephone: (202) 326-2991
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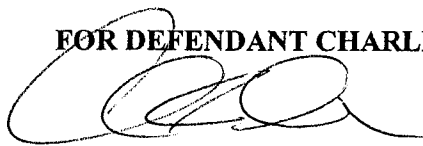
**FOR DEFENDANT RANDALL L. LESHIN, EXPRESS CONSOLIDATION, INC.
AND RANDALL L. LESHIN, P.A.:**



Randall L. Leshin, INDIVIDUALLY AND AS
PRESIDENT AND EXECUTIVE DIRECTOR OF
EXPRESS CONSOLIDATION, INC. AND OF RANDALL L. LESHIN, P.A.,

Date: 3/13/08

FOR DEFENDANT CHARLES FERDON:



CHARLES FERDON

Date: 3/13/08

Date: _____

Roger A. Colaizzi (admitted pro hac vice)
Counsel for Randall L. Leshin, Express Consolidation, Inc.,
Randall L. Leshin, P.A., and Charles Ferdon
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575 7th Street, N.W.
Washington, D.C. 20004
Telephone: (202) 344-8051
Fax: (202) 344-8300
Email: racolaizzi@venable.com

SO STIPULATED AND AGREED:

FOR THE PLAINTIFF FEDERAL TRADE COMMISSION:

Date: _____

Michael E. Tankersley (Bar No. A5500895)
Philip P. Tumminio (Bar No. A5501062)
Karen S. Hobbs (Bar No. A5501155)
Attorney E-mail addresses: mtankersley@ftc.gov,
khobbs@ftc.gov; ptumminio@ftc.gov
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm 288
Washington, DC 20580
Telephone: (202) 326-2991
Facsimile: (202) 326-3395

**FOR DEFENDANT RANDALL L. LESHIN, EXPRESS CONSOLIDATION, INC.
AND RANDALL L. LESHIN, P.A.:**

Date: _____

Randall L. Leshin, INDIVIDUALLY AND AS
PRESIDENT AND EXECUTIVE DIRECTOR OF
EXPRESS CONSOLIDATION, INC. AND OF RANDALL L. LESHIN, P.A.,

FOR DEFENDANT CHARLES FERDON:

Date: _____

CHARLES FERDON

Date: 3/14/08

Roger A. Colaiizzi (admitted pro hac vice)
Counsel for Randall L. Leshin, Express Consolidation, Inc.,
Randall L. Leshin, P.A., and Charles Ferdon
Theodore W. Atkinson (admitted pro hac vice)
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RUSSOMANNO & BORRELLO, P.A.
Museum Tower - Penthouse 2800
150 West Flagler Street
Miami, Florida 33130
Telephone: (305) 373-2101
Fax: (305) 373-2103

APPENDIX
Code of Federal Regulations, Title 16: Commercial Practices
PART 310 - TELEMARKETING SALES RULE

Federal Trade Commission

§310.1

[60 FR 26955, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004]

**PART 310—TELEMARKETING SALES
RULE**

Sec.

- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.

- 310.8 Fee for access to the National Do Not Call Registry.
- 310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 68 FR 4669, Jan. 29, 2003, unless otherwise noted.

§310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2

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§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

Federal Trade Commission**§ 310.3**

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog

which; contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays¹ for goods or services offered, failing to disclose

¹When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or

Continued

§ 310.3**16 CFR Ch. I (1-1-07 Edition)**

truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;²

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and

directing a customer to have a courier pick up payment or authorization for payment.

²For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

Federal Trade Commission

§ 310.3

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,³ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁴ Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁵

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into

³Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁴Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁵For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a

person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the

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goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a

violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶ of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer

⁶For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with §310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to §310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating §310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating 310.4(b)(1)(iv) if:

(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁷; and

(iv) the seller or telemarketer, in accordance with §310.5(b)-(d), retains records establishing compliance with §310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment

⁷This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004]

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁸

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees

⁸For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§ 310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant

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to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule, for any

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goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable office or cleaning supplies; *provided*, however, that §310.4(b)(1)(iii)(B) and §310.5 of this Rule shall not apply to sellers or telemarketers of non-durable office or cleaning supplies.

§310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any

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telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$62 per area code of data accessed, up to a maximum of \$17,050; *provided*, however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other Federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to

divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay \$62 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay \$31 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of

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this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005; 71 FR 43054, July 31, 2006]

§310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

- Sec.
- 311.1 Definitions.
- 311.2 Stayed or invalid parts.
- 311.3 Preemption.
- 311.4 Testing.
- 311.5 Labeling.
- 311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

§311.1 Definitions.

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contami-

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nated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of §311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by §311.5 of this part.

§311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institute of Standards and Technology ("NIST") on July 27, 1995, entitled "Engine Oil Licensing and Certification System," American Petroleum Institute ("API") Publication 1509, Thirteenth Edition, January, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of API Publication 1509, "Engine Oil Licensing and Certification System," may be obtained from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/