1 JENNIFER LARABEE, Cal. Bar No. 163989 JOHN D. JACOBS, Cal. Bar No. 134154 BARBARA CHUN, Cal. Bar No. 186907 2 Federal Trade Commission 10877 Wilshire Blvd., Ste. 700 3 Los Angeles, CA 90024 (310) 824-4343 (ph.) (310) 824-4380 (fax) 4 5 Attorneys for Plaintiff FTC

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

Federal Trade Commission. Plaintiff,

v.

Dennis Connelly, et al.,

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Defendants.

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

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

BACKGROUND

On August 3, 2006, Plaintiff Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed a complaint against Defendant Dennis Connelly and other defendants for permanent injunctive and other equitable relief, including consumer redress, applied ex parte for a temporary restraining order with asset freeze and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65 of the Federal Rules of Civil Procedure, and why a permanent receiver should not be appointed. On August 9, 2006, the Court issued the ex parte temporary restraining order, appointed Robb Evans and Robb Evans & Associates LLC ("Robb Evans") as temporary receiver over the corporate defendants, and issued an order to show cause why a preliminary injunction ought not be granted.

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

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

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

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

FINDINGS OF FACT

- 1. Defendant was properly served with the Complaint, Summons, TRO and First Amended Complaint in this matter.
- 2. Defendant was properly served with the Preliminary Injunction in this matter.
- 3. This Court has jurisdiction over the subject matter of the case and personal jurisdiction over Defendant. Venue in the Central District of California is proper.
- 4. The alleged actions of Defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

- 5. The allegations of the Complaint and the First Amended Complaint state a claim upon which relief can be granted against Defendant under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
- 6. Plaintiff has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.
- 7. Defendant has not admitted liability as to the charges in the Complaint or the First Amended Complaint, and his consent to settle and finally resolve this action shall not be interpreted to constitute an admission that he has engaged in any violations of any law or regulations.
- 8. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order.
- 9. Defendant waives any claim that he may hold against the Commission, its employees, representatives or agents.
- 10. Defendant waives any claim that they may hold under the Equal Access to Justice Act, 28 U.S.C. § 2412 (as amended), concerning the prosecution of this action to the date of this Order, and any rights to attorneys' fees that may arise under said provision of law.
 - 11. All parties shall bear their own costs and attorneys' fees.
- 12. Defendant enters into this Order freely, and acknowledges that he understands the provisions of this Order and is prepared to abide by its terms.
- 13. This Order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment, or forfeiture.
- 14. Entry of this Order is in the public interest and in the interest of the parties.

25 ///

DEFINITIONS

For purposes of this order, the following **Definitions** apply:

- 1. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, electronic email ("email"), computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate "document" within the meaning of the term.
 - 2. "Defendant" means Defendant Dennis Connelly.
- 3. "Corporate Defendants" means Defendants HOMELAND FINANCIAL SERVICES, NATIONAL SUPPORT SERVICES, LLC, UNITED DEBT RECOVERY, LLC, PROSPER FINANCIAL SOLUTIONS, ROBINA CAPITAL, INC. d/b/a PROSPER FINANCIAL SOLUTIONS, FINANCIAL LIBERTY SERVICES, LLC, and each of them.
- 4. The term "engaging or participating in telemarketing" means engaging or participating in any plan, program, or campaign that involves attempts to induce consumers to purchase any item, good, service, partnership, interest, trust interest, other beneficial interest, or chance to win a prize, by means of telephone sales presentations (in either inbound or outbound calls); provided that:
 - a. Among other things, the term "engaging or participating in telemarketing" includes not only personal participation in such a plan, program or campaign, but also managing or training others who participate in such a plan, program or campaign; or owning or operating an enterprise conducting such a plan, program, or campaign;

- b. the term "telemarketing" is also intended to include, but is not limited to, attempts to induce businesses to purchase toner or other office supplies by means of telephone sales presentations;
- c. the term "telemarketing" does not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited.
- 5. The term "debt negotiation" means
 - a) the business or practice of receiving, in return for consideration, or the scheduled receipt, of an individual consumer's monies, or evidences thereof, for the purpose of distribution among certain specified creditors in payment, or partial payment, of the individual consumer's obligations; or
 - b) the business or practice of acting or offering or attempting to act as an intermediary between an individual consumer and his creditors for the purpose of settling, negotiating, or in any way altering the terms of payment of any debt of an individual consumer.
- 6. "Consumer" means any natural person.
- 7. "Assisting others" means knowingly providing any of the following goods or services to another person or entity:
 - a. performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; or
 - b. formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; or
 - c. providing names of, or assisting in the generation of, potential customers; or
 - d. performing marketing services of any kind.

ORDER

T.

PROHIBITION ON TELEMARKETING

IT IS THEREFORE ORDERED that Defendant, his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby prohibited from engaging or participating in telemarketing, and from assisting others who are engaging or participating in telemarketing. Provided, however, that nothing in this provision shall be construed to prohibit Defendant from merely designing websites for any other person or business that engages or participates in telemarketing, so long as Defendant plays no role in formulating, devising or drafting sales claims, representations made to consumers, or other promotional language.

II.

PROHIBITION ON PARTICIPATION IN DEBT NEGOTIATION

IT IS FURTHER ORDERED that Defendant, his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby prohibited from engaging or participating in the sale, offering for sale, advertising, promotion or marketing of debt-negotiation services to consumers, which prohibition also includes, without limitation, formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; providing names of, or assisting in the generation of, potential customers; or performing customer service functions, including, but not limited to, receiving or responding to consumer complaints.

III.

PROHIBITION ON MATERIAL MISREPRESENTATIONS

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

IV.

PROHIBITION AGAINST MATERIAL OMISSIONS

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

///

V.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Within forty-five days of entry of this Order, Defendant shall pay to the Commission the sum of \$45,000.00 (FORTY-FIVE THOUSAND DOLLARS). Payment shall be made by certified or cashier's check made payable to the Federal Trade Commission or through wire transfer to an account designated by the Commission or its agent. Payment by certified or cashier's check shall be remitted to the Federal Trade Commission, Western Region, 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024;
- B. Defendant agrees to the continuation of the appointment of Robb Evans & Associates LLC as Permanent Receiver over Financial Liberty Services, LLC ("Financial Liberty"), Homeland Financial Services ("Homeland"), and National Support Services ("NSS"), and also as the Receiver over Federal Reverse Mortgage ("FRM"), with all of the same rights, duties and powers as set forth in the October 13, 2006 Preliminary Injunction which appointed Robb Evans as Permanent Receiver over all of the Corporate Defendants in this matter. Defendant waives and assigns to the Receiver any interest he might have in all accounts and assets held in the name of Financial Liberty, Homeland, NSS and FRM.
- C. For purposes of this section, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Defendant waives any right to contest any of the allegations set forth in the First Amended Complaint filed in this matter or the amount of the payment referenced in this Paragraph;
- D. Defendant's personal accounts and any other assets which were frozen pursuant to the orders entered in this case shall be unfrozen upon the entry of this Final Order;

E. If Defendant fails to make the \$45,000.00 payment under Paragraph V.A of this Order within the prescribed time period, the Commission may apply to the Court for entry of a judgment against Defendant in the amount of \$9,500,00.00 (NINE MILLION FIVE HUNDRED THOUSAND DOLLARS), which amount shall be immediately due and payable, less any amounts obtained from Defendant Torkelson pursuant to settlement or judgment in this case. For purposes of this Paragraph, Defendant waives any right to contest any of the allegations set forth in the Complaint filed in this matter or the amount of the requested judgment and agrees that the Court shall enter the monetary judgment in the amount of \$9,500,00.00 (NINE MILLION FIVE HUNDRED THOUSAND DOLLARS) upon a showing by the Commission that Defendant failed to make the \$45,000.00 payment as set forth under Paragraph V.A;

Provided, that Defendant may cure a late payment by delivering such payment to the Commission within three (3) days of the original payment date;

- F. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to restitution and any attendant expenses for the administration of any restitution fund. In the event that direct restitution to consumers is wholly or partially impracticable or funds remain after restitution is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Department of the Treasury as disgorgement and not as a fine or penalty. The Commission shall have full and sole discretion to:
 - Determine the criteria for participation by individual claimants in any consumer restitution program implemented pursuant to this Order;

- 2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs, and
- 3. Delegate any and all tasks connected with such restitution program to any individual, partnerships, or corporations; and pay reasonable fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order;
- G. Defendant expressly waives any rights he may possess to litigate the issue of monetary relief. Defendant acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between Plaintiff and Defendant; and
- H. Defendant shall have no right to challenge the Commission's choice of remedies under this Paragraph.

VI.

RELIANCE ON REPRESENTATIONS

IT IS FURTHER ORDERED that:

A. The Commission's agreement to, and the Court's approval of, this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's financial condition, as represented in the financial statement dated September 3, 2007, including attachments, and in any deposition testimony (except to the extent such testimony was corrected by his September 3, 2007 financial statement), all of which the Commission relied upon in negotiating and agreeing to the terms of this Order. If, upon motion by the Commission to the Court, the Court finds that Defendant, in any of the above-referenced materials, failed to disclose any asset with a value in excess of \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, monetary judgment will be entered against

Defendant in the amount of \$9,500,000.00 (NINE MILLION FIVE HUNDRED THOUSAND DOLLARS), which represents the total amount of money that Defendants Connelly and Torkelson received from the corporate defendants, and will become immediately due and payable, less any payments already made.

B. Notwithstanding any other provision of this Order, Defendant agrees that in any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Defendant waives any right to contest any of the allegations set forth in the Complaint filed in this matter or the \$9,500,000.00 (NINE MILLION FIVE HUNDRED THOUSAND DOLLARS) judgment referenced above.

VII.

CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any of the Defendants in this litigation, *FTC v. Dennis Connelly, et al. SACV06-701 DOC*, or paid money to any of the Corporate Defendants, at any time prior to entry of this order.

Provided, however, that such identifying information may be disclosed to a law enforcement agency or as required by any law, regulation, or court order.

--

VIII.

COMPLIANCE MONITORING

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

- A. Within fourteen (14) days of receipt of written notice from a representative of the Commission, 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 to any Commission representatives during normal business hours to any business location in Defendant's possession or direct or indirect control for the purpose of inspecting the business operation. Defendant, after attempting to resolve a dispute without court action, and for good cause shown, may file a motion with this Court seeking an order which justice requires to protect Defendant or any party or person from annoyance, embarrassment, oppression, or undue burden or expense, 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; and
- 2. Posing as consumers and suppliers to Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and
- C. Defendant 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)).

IX.

COMPLIANCE REPORTING BY DEFENDANT

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, Defendant shall notify the Commission in writing of:
- 1. Any change in Defendant's residence, mailing address and/or telephone numbers within ten (10) days of such change; and
- 2. Any change in Defendant's employment status (including self employment) and any change in the ownership interest of Defendant in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for, a statement of the nature of the business, and a statement of Defendant's duties and responsibilities in connection with the business and employment; and
- 3. Any changes in Defendant's name or use of any aliases or fictitious names.
- B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the Commission, sworn to under

penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

- 1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph XII, below; and
- 2. Any other changes required to be reported under Subparagraph A of this Paragraph IX.
- C. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director of Enforcement Federal Trade Commission 600 Pennsylvania Ave., N.W. Washington, D.C. 20580

Re: FTC v. Dennis Connelly et al., Civil Action No. SACV-06-0701 DOC

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

X.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant shall, in connection with this action or any subsequent investigations related to or associated with the transactions or occurrences that are the subject of the Commission's Complaint, cooperate in good faith with the Commission and appear, at such places and times as the Commission shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Commission. If requested in writing by the Commission or by the Commission's attorneys, Defendant shall appear and provide truthful testimony in

1 any trial, deposition, or other proceeding related to or associated with the 2 3 4 5 6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena. The Commission shall provide reasonable notice to Defendant of any need for his appearance and shall keep designated counsel for Defendant apprised of developments in the litigation. The Commission acknowledges that Defendant may provide the same level of cooperation to any other Defendant in this action under the same terms and conditions.

XI.

RECORD KEEPING PROVISIONS

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

- Accounting records that reflect the cost of goods or services sold, A. revenues generated, and the disbursement of such revenues;
- В. Personnel records accurately reflecting: the name, address, email (if any) 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;

27

- 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, website printouts, 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 XII, below, and all reports submitted to the FTC pursuant to Paragraph IX, above.

XII.

DISTRIBUTION OF ORDER BY DEFENDANT

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

- A. For any business that Defendant controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. For any business where Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

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

XIII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER **BY DEFENDANT**

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

XIV.

SEVERABILITY

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

XV.

PETITIONS FOR MODIFICATION

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

///

1		XVI.
2	RETENTION OF JURISDICTION	
3		
4	IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this	
5	matter for purposes of construction, modification and enforcement of this Order.	
6	SO STIPULATED:	
7		
8	, 2007	Dennis Connelly, Defendant
9		Definis Connerty, Defendant
10	, 2007	
11	, 2007	Jennifer Larabee
12		John D. Jacobs
13		Barbara Y.K. Chun
14		Attorneys for Plaintiff Federal Trade Commission
15		
16	APPROVED AS TO FORM:	
17		
18	, 2007	
19		H. Dean Steward
20		Attorney for Defendant Dennis Connelly
21		
22	SO ORDERED:	
23	, 2007	
24	,	The Honorable David O. Carter
24 25		United States District Judge
26		
27		
28		