

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**AMERICAN STUDENT LOAN  
CONSOLIDATORS, LLC, a Florida  
limited liability company, d/b/a ASLC  
Processing;**

**BBND MARKETING, LLC, a Florida  
limited liability company, d/b/a United  
Processing Center, United SL Processing,  
and United Student Loan Processing;**

**DANIEL UPBIN, individually and as  
owner, officer, or manager of American  
Student Loan Consolidators, LLC, and  
BBND Marketing, LLC; and**

**PATRICK O'DEADY, individually and as  
owner, officer, or manager of American  
Student Loan Consolidators, LLC, and  
BBND Marketing, LLC,**

**Defendants.**

**Case No. 17-61862-CIV-GAYLES**

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

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed on September 25, 2017, its complaint seeking a permanent injunction and other equitable relief ("Complaint"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b),

and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and an *ex parte* motion for temporary restraining order pursuant to FED. R. Civ. P. Rule 65(b). On September 26, 2017, this Court granted the FTC’s motion and entered a temporary restraining order (“TRO”). On October 25, 2017, the Commission and Defendants filed a stipulated preliminary injunction, which this Court entered and ordered on October 26, 2017. The Commission and Defendants now stipulate to the entry of this Stipulated Final Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

#### FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and in violation of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310, in connection with the marketing and sale of student loan debt relief.
3. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
4. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
5. Defendants and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

## DEFINITIONS

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

A. **“Assisting Others”** includes:

1. performing customer service functions, including receiving or responding to consumer complaints;
2. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including any telephone sales script, direct mail solicitation, or the design, text, or use of images of any Internet website, email, or other electronic communication;
3. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
4. providing names of, or assisting in the generation of, potential customers;
5. performing marketing, billing, or payment services of any kind; or
6. acting or serving as an owner, officer, director, manager, or principal of any entity.

B. **“Defendants”** means all of the Individual Defendants and Corporate Defendants, individually, collectively, or in any combination.

1. **“Corporate Defendants”** means American Student Loan Consolidators, LLC, and BBND Marketing, LLC, dba United Processing Center, United SL Processing, and United Student Loan Processing, and their divisions,

subsidiaries, affiliates, successors, and assigns and any other fictitious business entities or business names created or used by these entities, or any of them.

2. **“Individual Defendants”** means Daniel Upbin (“Upbin”) and Patrick O’Deady (“O’Deady”).

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

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

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

E. **“Secured or Unsecured Debt Relief Product or Service”** means:

1. With respect to any mortgage, loan, debt, or obligation between a Person and one or more secured or unsecured creditors or debt collectors, any product, service, plan, or program represented, expressly or by implication, to:

- a. stop, prevent, or postpone any mortgage or deed of foreclosure sale for a Person's dwelling, any other sale of collateral, any repossession of a Person's dwelling or other collateral, or otherwise save a Person's dwelling or other collateral from foreclosure or repossession;
- b. negotiate, obtain, or arrange a modification, or renegotiate, settle, or in any way alter any terms of the mortgage, loan, debt, or obligation, including a reduction in the amount of interest, principal balance, monthly payments, or fees owed by a Person to a secured or unsecured creditor or debt collector;
- c. obtain any forbearance or modification in the timing of payments from any secured or unsecured holder or servicer of any mortgage, loan, debt, or obligation;
- d. negotiate, obtain, or arrange any extension of the period of time within which a Person may (i) cure his or her default on the mortgage, loan, debt, or obligation, (ii) reinstate his or her mortgage, loan, debt, or obligation, (iii) redeem a dwelling or other collateral, or (iv) exercise any right to reinstate the mortgage, loan, debt, or obligation or redeem a dwelling or other collateral;
- e. obtain any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling or other collateral; or

- f. negotiate, obtain, or arrange (i) a short sale of a dwelling or other collateral, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of a mortgage, loan, debt, or obligation other than a sale to a third party that is not the secured or unsecured loan holder.

The foregoing shall include any manner of claimed assistance, including auditing or examining a Person's application for the mortgage, loan, debt, or obligation.

- 2. With respect to any loan, debt, or obligation between a Person and one or more unsecured creditors or debt collectors, any product, service, plan, or program represented, expressly or by implication, to:
  - a. repay one or more unsecured loans, debts, or obligations; or
  - b. combine unsecured loans, debts, or obligations into one or more new loans, debts, or obligations.

**ORDER**

**I. BAN ON SECURED AND UNSECURED DEBT RELIEF PRODUCTS AND SERVICES**

IT IS ORDERED that Defendants are permanently restrained and enjoined from advertising, marketing, promoting, offering for sale, or selling, or Assisting Others in the advertising, marketing, promoting, offering for sale, or selling, of any Secured or Unsecured Debt Relief Product or Service.

**II. PROHIBITION AGAINST MISREPRESENTATIONS RELATING TO FINANCIAL PRODUCTS AND SERVICES**

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in

connection with the advertising, marketing, promoting, offering for sale, or selling of any Financial Product or Service, are permanently restrained and enjoined from misrepresenting, or Assisting Others in misrepresenting, expressly or by implication:

- A. the terms or rates that are available for any loan or other extension of credit, including:
1. closing costs or other fees;
  2. the payment schedule, monthly payment amount(s), any balloon payment, or other payment terms;
  3. the interest rate(s), annual percentage rate(s), or finance charge(s), and whether they are fixed or adjustable;
  4. the loan amount, credit amount, draw amount, or outstanding balance; the loan term, draw period, or maturity; or any other term of credit;
  5. the amount of cash to be disbursed to the borrower out of the proceeds, or the amount of cash to be disbursed on behalf of the borrower to any third parties;
  6. whether any specified minimum payment amount covers both interest and principal, and whether the credit has or can result in negative amortization; or
  7. that the credit does not have a prepayment penalty or whether subsequent refinancing may trigger a prepayment penalty and/or other fees;
- B. the ability to improve or otherwise affect a consumer's credit record, credit history, credit rating, or ability to obtain credit, including that a consumer's credit record, credit history, credit rating, or ability to obtain credit can be improved by

permanently removing current, accurate negative information from the consumer's credit record or history;

- C. that a consumer will receive legal representation; or
- D. any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

**III. PROHIBITION AGAINST MISREPRESENTATIONS RELATING TO ANY PRODUCTS OR SERVICES**

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, or selling of any product, service, plan, or program, are permanently restrained and enjoined from misrepresenting, or Assisting Others in misrepresenting, expressly or by implication:

- A. any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. that any Person is affiliated with, endorsed or approved by, or otherwise connected to any other Person; government entity; public, non-profit, or other non-commercial program; or any other program;
- C. the nature, expertise, position, or job title of any Person who provides any product, service, plan, or program; or



- D. any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

**IV. PROHIBITION AGAINST UNSUBSTANTIATED CLAIMS**

IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale of any Financial Product or Service, are permanently restrained and enjoined from making any representation or Assisting Others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any Financial Product or Service, unless the representation is non-misleading, and, at the time such representation is made, Defendants possess and rely upon competent and reliable evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant fields, when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true.

**V. MONETARY JUDGMENT AND PARTIAL SUSPENSION**

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Twenty-Three million, Three Hundred Ninety-One Thousand, Five Hundred and Forty-Six Dollars (\$23,391,546) is entered in favor of the Commission against Individual Defendants and Corporate Defendants, jointly and severally, as equitable monetary relief.
- B. In partial satisfaction of the monetary judgment, Defendant Upbin is ordered to pay to the Commission \$135,000, which, as Defendant Upbin stipulates, his

undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

- C. In partial satisfaction of the monetary judgment, Defendant O'Deady is ordered to pay to the Commission \$90,000, which, as Defendant O'Deady stipulates, his undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.
- D. In partial satisfaction of the monetary judgment, Defendants are ordered to liquidate the Florida Pre-Paid College Savings Plans No. ....8305, ....7301, ....6427, and ....6964 within 15 days after the entry of this Order. All monies from such liquidation, after the payment of any cancellation fees, must be paid within 20 days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.
- E. In partial satisfaction of the monetary judgment, Defendants are ordered to liquidate Merrill Lynch Account no. ....2558-SEP (Upbin) and Merrill Lynch Account no. ....2554-SEP (O'Deady) within 15 days after the entry of this Order. All monies from such liquidation, after the subtraction of any fees and any reasonably estimated taxes to be owed related to those accounts, must be paid within 20 days of entry of this Order by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

F. In partial satisfaction of the monetary judgment, any assets held by third parties in the name of, or for the benefit of, Defendants must be transferred to the Commission or its designated agent, including, but not limited to the following assets:

1. Within ten (10) business days of receiving notice of this Order, TD Bank, its parent corporation, subsidiaries, principals, and agents must transfer to the Commission by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

- a. Account No. ....5582, held in the name of Daniel Upbin;
- b. Account No. ....4005, held in the name of Patrick O'Deady;
- c. Account No. ....5339, held in the name of Patrick O'Deady;
- d. Account No. ....5785, held in the name of Patrick O'Deady;
- e. Account No. ....1982, held in the name of Heather O'Deady;
- f. Account No. ....5574 held in the name of American Student Loan Consolidators LLC; and
- g. Account No. ....0242 held in the name of Performance Debt Relief LLC.

2. Within ten (10) business days of receiving notice of this Order, Merrill Lynch, its parent corporation, subsidiaries, principals, and agents must transfer to the Commission by electronic fund transfer or certified bank or

cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

a. Broker Account No. ....1123, held in the name of Daniel Upbin;  
and

b. Broker Account No. ....1121, held in the name of Daniel Upbin.

3. Within ten (10) business days of receiving notice of this Order, Chase Bank, its parent corporation, subsidiaries, principals, and agents must transfer to the Commission by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

a. Account No.....5977, held in the name of Patrick O'Deady;

b. Account No.....5743, held in the name of Patrick O'Deady;  
and

c. Account No. ....4421, held in the name of Patrick O'Deady.

4. Within ten (10) business days of receiving notice of this Order, Bank of America, its parent corporation, subsidiaries, principals, and agents must transfer to the Commission by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

- a. Account ending in No. 0447 in the name of American Student Loan Consolidators, LLC;
  - b. Account ending in No. 9888 in the name of BBND Marketing, LLC dba United Processing Center;
  - c. Account ending in No. 0436 in the name of BBND Marketing, LLC;
  - d. Account ending in No. 7104 in the name of BBND Marketing, LLC dba United Processing Center; and
  - e. Account ending in No. 3281 in the name of Daniel Upbin.
- G. The Receiver is directed to liquidate assets held by the Receiver and, after satisfaction of any Court-authorized payments, transfer the remaining assets and net proceeds from the sale of any assets to the FTC.
- H. Defendants further assign to the Receiver or the Receiver's designee all rights, title, and interest in any claims they have against any of the Corporate Defendants and in the membership interest in these entities directly or indirectly owned by them.
- I. Upon completion of all asset transfers, as specified in this Section V, the remainder of the judgment is suspended, subject to the Subsections below.
- J. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Individual Defendant Daniel Upbin signed on October 10, 2017, including the attachments;
2. the Financial Statement of Individual Defendant Patrick O'Deady signed on October 8, 2017, including the attachments;
3. the Financial Statement of Corporate Defendant American Student Loan Consolidators, LLC, signed by Daniel Upbin on October 10, 2017, including the attachments;
4. the Financial Statement of Corporate Defendant BBND Marketing, LLC, signed by Daniel Upbin on October 10, 2017, including the attachments; and
5. the e-mails written by Defendants' counsel Michael Pineiro to Commission counsel Harold Kirtz dated April 30, 2018; May 1, 2018 (2-e-mails); May 21, 2018 (2 e-mails); and May 22, 2018;

and premised upon the truthfulness, accuracy, and completeness of Defendants' answers in their depositions dated May 22, 2018.

- K. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.
- L. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A. above (which the parties stipulate only for purposes of this Section represents the consumer

injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

#### VI. ADDITIONAL MONETARY PROVISIONS

- A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
- C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.
- E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides

that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this subsection.

- F. The asset freeze is modified to permit the payments and transfers identified in Section V. Upon completion of those payments and transfers, the asset freeze is dissolved.

#### **VII. CUSTOMER INFORMATION**

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

- A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. Defendants represent that they have provided this redress information to the Commission. If a representative of the Commission requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Commission, within 14 days.
- B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account



(including a student loan account, FSA ID, credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with any Secured or Unsecured Debt Relief Product or Service.

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

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

#### **VIII. COOPERATION**

IT IS FURTHER ORDERED that Defendants must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendants must provide truthful and complete information, evidence, and testimony. Defendants must appear, and Corporate Defendants must cause Defendants' officers, employees, representatives, or agents to appear, for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

#### **IX. RECEIVERSHIP TERMINATION**

IT IS FURTHER ORDERED that the Receiver must complete all duties within 120 days after entry of this Order, but any party or the Receiver may request that the Court extend that Receiver's term for good cause.

## **X. ORDER ACKNOWLEDGMENTS**

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

- A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of this Order and all agents and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## **XI. COMPLIANCE REPORTING**

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

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how Defendants are in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

- B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or control directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of any entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
  2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious names, or residence address; or (b) title or role in any business activity, including any business for which such Individual Defendant performs services whether as an employee or otherwise and any entity in which such Individual Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the

United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to [DEbrief@ftc.gov](mailto:DEbrief@ftc.gov) and to [hkirtz@ftc.gov](mailto:hkirtz@ftc.gov) or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line of the e-mail must begin: FTC v. American Student Loan Consolidators, LLC, et. al, X170053.

## XII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, each Corporate Defendant and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each Person providing services, whether as an employee or otherwise, that Person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material.

### **XIII. COMPLIANCE MONITORING**

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission to interview any employee or other Person affiliated with Defendants who has agreed to such an interview. The Person interviewed may have counsel present.
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the

necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

- D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning any Individual Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

**XIV. RETENTION OF JURISDICTION**

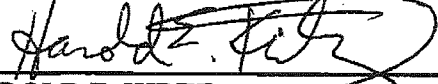
IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 30<sup>th</sup> day of November, 2018.

  
DARRIN P. GAYLES  
UNITED STATES DISTRICT JUDGE

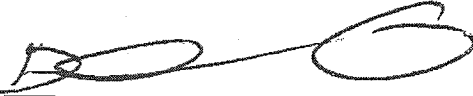
**SO STIPULATED AND AGREED:**

**FOR PLAINTIFF FEDERAL TRADE  
COMMISSION:**

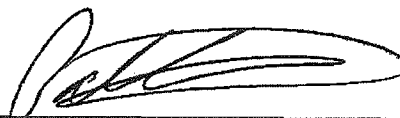
  
HAROLD E. KIRTZ  
Florida Special Bar Number A5500743  
NICHOLAS M. MAY  
D.C. Bar Number 979754  
Federal Trade Commission  
225 Peachtree Street, N.E., Suite 1500  
Atlanta, GA 30303  
Telephone: (404) 656-1357 (Kirtz)  
(404) 656-1360 (May)  
Facsimile: (404) 656-1379  
E-mail: [hkirtz@ftc.gov](mailto:hkirtz@ftc.gov)  
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Attorneys for Defendants

  
DANIEL UPBIN, individually, and as  
owner, officer, manager, and member of  
American Student Loan Consolidators, LLC,  
and BBND Marketing, LLC





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PATRICK O'DEADY, individually, and as  
owner, officer, manager, and member of  
American Student Loan Consolidators, LLC,  
and BBND Marketing, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**v.**

**AMERICAN STUDENT LOAN  
CONSOLIDATORS, LLC, a Florida limited  
liability company, d/b/a ASLC Processing;**

**BBND MARKETING, LLC, a Florida  
limited liability company, d/b/a United  
Processing Center, United SL Processing,  
and United Student Loan Processing;**

**DANIEL UPBIN, individually and as owner,  
officer, or manager of American Student  
Loan Consolidators, LLC, and BBND  
Marketing, LLC; and**

**PATRICK O'DEADY, individually and as  
owner, officer, or manager of American  
Student Loan Consolidators, LLC, and  
BBND Marketing, LLC,**

**Defendants.**

**Case No. 17-61862-CIV-  
GAYLES**

**ACKNOWLEDGMENT BY AFFIDAVIT OF RECEIPT OF ORDER BY DEFENDANT**

1. My name is [*insert name of Individual Defendant. If executed only or also on behalf of a Corporate Defendant, also insert:* ], my job title is \_\_\_\_\_, and I am authorized to accept service of process on [*insert name of Corporate Defendant*]. I am [a U.S. citizen] over the age of eighteen, and I have personal knowledge of the facts set forth in this Acknowledgment.
2. [I was a Defendant and *name of Corporate Defendant* was a Defendant] in FTC v. American Student Loan Consolidators, LLC, et al., which is the court case listed near the top of this page.

3. On [\_\_\_\_\_, 201\_], I received a copy of the [exact full title of the Order], which was signed by the Honorable [Judge's name] and entered by the Court on [Month \_\_, 201\_]. [A true and correct copy of the Order that I received is attached to this Acknowledgment.]

[4. If affiant is also acknowledging for a Corporate Defendant: On [Month \_\_, 201\_], [name of Corporate Defendant] received a copy of the [exact full title of the Order], which was signed by the Honorable [Judge's name] and entered by the Court on [Month \_\_, 201\_]. The copy of the Order attached to this Acknowledgment is a true and correct copy of the Order it received.]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [Month \_\_, 201\_].

\_\_\_\_\_  
[Full name of Defendant]  
[[individually and as an] officer of [Corporate Defendant]]

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_