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1 Part 310, in connection with the marketing and sale of debt relief services. The
2 parties, by and through their respective counsel, have agreed to entry of this
3 Stipulated Final Judgment and Order (“Order”).

4 The parties having requested the Court to
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1 service of the Summons and Complaint.

2 7. This Order is in addition to, and not in lieu of, any other civil or
3 criminal remedies that may be provided by law.

4 8. Entry of this Order is in the public interest.

5 **ORDER**

6 **DEFINITIONS**

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

8 A. **“Assisting others”** includes, but is not limited to:

- 9 1. performing customer service functions, including, but not
10 limited to, receiving or responding to consumer complaints;
11 2. formulating or providing, or arranging for the formulation or
12 provision of, any advertising or marko2fET63.78 13.62 .2.5750 or
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1 results.

2 C. **“Consumer”** means any natural person.

3 D. **“Corporate Defendant”** means FDN Solutions, LLC, also d/b/a
4 Everest Debt Solutions, 1800debtsettlement.com, and
5 everestdebtrelief.com; and their successors and assigns.

6 E. **“Customer”** means any person who has paid, or may be required to
7 pay, for products, services, plans, or programs offered for sale or sold
8 by the Defendants.

9 F. **“Debt relief service** means any product, service, plan, or program
10 represented, expressly or by implication, to renegotiate, settle, or in
11 any way alter the terms of payment or other terms of the debt between
12 a consumer and one or more unsecured creditors or debt collectors,
13 including, but not limited to, a reduction in the balance, interest rate,
14 or fees owed by a consumer to an unsecured creditor or debt collector.

15 G. **“Defendants”** means the Individual Defendant and the Corporate
16 Defendant, individually, collectively, or in any combination.

17 H. **“Financial related product or service”** means any product, service,
18 plan or program represented, expressly or by implication, to:

- 19 1. provide any consumer, arrange for any consumer to receive, or
20 assist any consumer in receiving, credit, debit, or stored value
21 cards;
- 22 2. improve, or arrange to improve, any consumer’s credit record,
23 credit history, or credit rating;
- 24 3. provide advice or assistance to any consumer with regard to any
25 activity or service the purpose of which is to improve a
26 consumer’s credit record, credit history, or credit rating;
- 27 4. provide any consumer, arrange for any consumer to receive, or
28 assist any consumer in receiving, a loan or other extension of

1 credit; or

2 5. provide any consumer, arrange for any consumer to receive, or
3 assist any consumer in receiving any service represented,
4 expressly or by implication, to renegotiate, settle, or in any way
5 alter the terms of payment or other terms of the debt between a
6 consumer and one or more secured creditors, servicers, or debt
7 collectors.

8 I. **“Individual Defendant”** means Timothy Daniels.

9 J. **“Material”** means likely to affect a person’s choice of, or conduct
10 regarding, goods or services.

11 K. **“Person”** means a natural person, an organization, or other legal
12 entity, including a corporation, partnership, sole proprietorship,
13 limited liability company, association, cooperative, or any other group
14 or combination acting as an entity.

15 L. **“Tax relief product or service”** means any good, service, plan, or
16 program represented expressly or by implication to renegotiate, settle,
17 or alter the terms of a tax obligation between a person and a taxing
18 entity.

19 **PROHIBITED MISREPRESENTATIONS RELATING**
20 **TO DEBT RELIEF SERVICES**

21 **I.**

22 IT IS THEREFORE ORDERED that Defendants and their officers, agents,
23 servants, employees, and attorneys, and t

1 misrepresenting or assisting others in misrepresenting, expressly or by implication,
2 any of the following:

- 3 A. That they will substantially reduce consumers' debts;
- 4 B. That any testimonial represents an actual and genuine consumer
5 testimonial from one of Defendants' customers;
- 6 C. That they will settle consumers' debts quickly or immediately;
- 7 D. The benefits, performance, or efficacy of any good or service to
8 reduce, eliminate, or restructure consumers' debts; and
- 9 E. Any material fact.

10 **PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL**
11 **RELATED PRODUCTS OR SERVICES OR TAX RELIEF PRODUCTS OR**
12 **SERVICES**

13 **II.**

14 IT IS FURTHER ORDERED that Defendants and their officers, agents,
15 servants, employees, and attorneys, and those persons or entities in active concert
16 or participation with any of them who receive actual notice of this Order by
17 personal service, facsimile transmission, email, or otherwise, whether acting
18 directly or through any corporation, subsidiary, division, or other device, in
19 connection with the advertising, marketing, promotion, offering for sale, or sale of
20 any financial related product or service or tax relief product or service, are hereby
21 permanently restrained and enjoined from misrepresenting or assisting others in
22 misrepresenting, expressly or by implication, any material fact, including but not
23 limited to:

- 24 A. The terms or rates that are available for any loan or other extension of
25 credit;
- 26 B. Any person's ability to improve or otherwise affect a consumer's
27 credit record, credit history, credit rating, or ability to obtain credit;
- 28 C. That any person can obtain a modification of any secured loan or

1 mortgage or postpone or cancel the foreclosure of any property by
2 renegotiating, settling, or in any other way altering the terms of
3 payment or other terms of such debt;

4 D. That any person can obtain a reduction of any tax debt by
5 renegotiating, settling, or in any other way altering the terms of a debt
6 owed to any taxing entity; or

- 1 D. That any person providing a testimonial has purchased, received, or
2 used the product, service, plan, or program;
- 3 E. That the experience represented in a testimonial of the product,
4 service, plan, or program represents the person's actual experience
5 resulting from the use of the product, service, plan, or program under
6 the circumstances depicted in the advertisement;
- 7 F. The total costs to purchase, receive, or use, or the quantity of, the
8 product, service, plan, or program;
- 9 G. Any material restriction, limitation, or condition on purchasing,
10 receiving, or using the product, service, plan, or program; or
- 11 H. Any material aspect of the performance, efficacy, nature, or
12 characteristics of the product, service, plan, or program.

13 **SUBSTANTIATION FOR BENEFIT, PERFORMANCE,**
14 **AND EFFICACY CLAIMS**

15 **IV.**

16 IT IS FURTHER ORDERED that Defendants and their officers, agents,
17 servants, employees, and attorneys, and those persons or entities in active concert
18 or participation with any of them who receive actual notice of this Order by
19 personal service, facsimile transmission, email, or otherwise, whether acting
20 directly or through any corporation, subsidiary, division, or other device, in
21 connection with the advertising, marketing, promotion, offering for sale, or sale of
22 any debt relief service, financial related product or service, or tax relief product or
23 service are hereby permanently restrained and enjoined from making any
24 representation or assisting others in making any representation, expressly or by
25 implication, about the benefits, performance, or efficacy of any debt relief service,
26 financial related product or service, or tax relief product or service, unless at the
27 time such representation is made, Defendants possess and rely upon competent and
28 reliable evidence that substantiates that the representation is true.

PROHIBITED TELEMARKETING ACTIVITIES

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1 other financial account), of any person which any Defendant obtained
2 prior to the date of entry of this Order in connection with the
3 marketing or promotion of debt relief services; and

- 4 B. Failing to dispose of such customer information in all forms in their
5 possession, custody, or control within thirty (30) days after the date of
6 entry of this Order. Disposal shall be by means that protect against
7 unauthorized access to the customer information, such as by burning,
8 pulverizing, or shredding any papers, and by erasing or destroying any
9 electronic media, to ensure that the customer information cannot
10 practicably be read or reconstructed.

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

14 **MONETARY JUDGMENT**

15 **VII.**

16 IT IS FURTHER ORDERED that:

- 17 A. A judgment for equitable monetary relief is hereby entered jointly
18 and severally against FDN Solutions, LLC, and Timothy Daniels in
19 the amount of Three Million Two Hundred Ninety-One Thousand
20 Eight Hundred and Thirty Dollars (\$3,291,830.00).
- 21 B. Defendants are ordered to pay to the Commission Eighty-Five
22 Thousand Dollars (\$85,000), which Defendants shall place in their
23 undersigned counsel's escrow account by no later than March 30,
24 2012, which funds shall be held by their undersigned counsel in
25 escrow for no purpose other than payment to the Commission. Such
26 payment must be made within 10 days of the entry of this Order by
27 electronic transfer, pursuant to instructions to be provided by a
28 representative of the FTC. Upon such payment, the remainder of the

1 judgment is suspended subject to Section VIII.

2 C. All funds received by the Commission pursuant to this Order shall be
3 deposited into a fund administered by the Commission or its agent to
4 be used for equitable relief, including, but not limited to, restitution
5 and any attendant expenses for the administration of such equitable
6 relief. In the event that direct restitution to consumers is wholly or
7 partially impracticable or funds remain after restitution is completed,
8 the Commission may apply any remaining funds for such other
9 equitable relief (including consumer information remedies) as it
10 determines to be reasonably related to Defendants' practices alleged in
11 the Complaint. Any funds not used for such equitable relief shall be
12 deposited to the U.S. Treasury as disgorgement. Defendants shall
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1 Commission to enforce its rights to any payment or money judgment
2 pursuant to this Order, including but not limited to a
3 nondischargeability complaint in any bankruptcy case. Defendants
4 further stipulate and agree that the facts alleged in the Complaint
5 establish all elements necessary to sustain an action by the
6 Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy
7 Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have
8 collateral estoppel effect for such purposes

9 G. In accordance with 31 U.S.C. § 7701, Defendants are hereby required,
10 unless they already have done so, to furnish to the Commission
11 taxpayer identifying numbers, which shall be used for purposes of
12 collecting and reporting on any delinquent amount arising out of their
13 relationship with the government.

14 **RIGHT TO REOPEN**

15 **VIII.**

16 IT IS FURTHER ORDERED that:

17 A. The FTC's agreement to this Order, requiring that the judgment be
18 suspended for less than the full amount of the judgment, is expressly
19 premised upon the truthfulness, accuracy and completeness of
20 Defendants' financial condition, as represented in Defendants' sworn
21 financial statements submitted by the Defendants to the Commission
22 on July 17, 2011 and March 1, 2012, along with Defendants'
23 supporting financial documents and sworn statements submitted by
24 the Defendants or on their behalf to the Commission on March 23,
25 2012 (collectively, "Financial Statements"), and compliance with
26 Section VII of this Order. The Financial Statements and supporting
27 documents contain material information upon which the FTC relied in
28 negotiating and agreeing to this Order. If, upon motion by the FTC,

1 this Court finds that Defendants failed to disclose any material asset or
2 materially misstated the value of any asset in the Financial Statements,
3 made any other material misstatement or omission in the Financial
4 Statements, or violated Section VII of this Order in any material
5 respect, the Court shall enter judgment in the amount of Three Million
6 Two Hundred Ninety-One Thousand Eight Hundred and Thirty
7 Dollars (\$3,291,830.00) in equita

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1 any other Defendant, is the majority owner or directly or indirectly
2 controls, and each Corporate Defendant, must deliver a copy of this
3 Order to: (1) all principals, officers, directors, and managers; (2) all
4 employees, agents, and representatives who participate in conduct
5 related to the subject matter of the Order; and (3) any business entity
6 resulting from any change in structure as set forth in the Section titled
7 Compliance Reporting. Delivery must occur within seven (7) days of
8 entry of this Order for current personnel. To all others, delivery must
9 occur before they assume their responsibilities.

- 10 C. From each individual or entity to which a Defendant delivered a copy
11 of this Order, that Defendant must obtain, within 30 days, a signed
12 and dated acknowledgment of receipt of this Order.

13 **COMPLIANCE REPORTING**

14 **X.**

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

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

- 19 1. Each Defendant must: (a) designate at least one telephone
20 number and an email, physical, and postal address as points of
21 contact, which representatives of the Commission may use to
22 communicate with Defendant; (b) identify all of that
23 Defendant's businesses by all of their names, telephone
24 numbers, and physical, postal, email, and Internet addresses; (c)
25 describe the activities of each business, including the products
26 and services offered, the means of advertising, marketing, and
27 sales, and the involvement of any other Defendant (which the
28 Individual Defendant must describe if he knows or should know

1 due to his own involvement); (d) describe in detail whether and
2 how that Defendant is in compliance with each Section of this
3 Order; and (e) provide a copy of each Order Acknowledgment
4 obtained pursuant to this Order, unless previously submitted to
5 the Commission;

- 6 2. Additionally, each Individual Defendant must: (a) identify all
7 telephone numbers and all email, Internet, physical, and postal
8 addresses, including all residences; (b) identify all titles and
9 roles in all business activities, including any business for which
10 such Defendant performs services whether as an employee or
11 otherwise and any entity in which such Defendant has any
12 ownership interest; and (c) describe in detail such Defendant's
13 involvement in each such business, including title, role,
14 responsibilities, participation, authority, control, and any
15 ownership.

16 B. For 10 years following entry of this Order, each Defendant must
17 submit a compliance notice, sworn under penalty of perjury, within 14
18 days of any change in the following:

- 19 1. Each Defendant must report any change in: (a) any designated
20 point of contact; (b) the structure of any Corporate Defendant or
21 any entity that Defendant has any ownership interest in or
22 directly or indirectly controls that may affect compliance
23 obligations arising under this Order, including: creation,
24 merger, sale, or dissolution of the entity or any subsidiary,
25 parent, or affiliate that engages in any acts or practices subject
26 to this Order.
- 27 2. Additionally, each Individual Defendant must report any
28 change in: (a) name, including aliases or fictitious name, or

1 residence address; or (b) title or role in any business activity,
2 including any business for which such Defendant performs
3 services whether as an employee or otherwise and any entity in
4 which such Defendant has any ownership interest, and identify
5 its name, physical address, and Internet address, if any.

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

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

15 E. Unless otherwise directed by a Commission representative in writing,
16 all submissions to the Commission pursuant to this Order must be
17 emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S.
18 Postal Service) to: Associate Director for Enforcement, Bureau of
19 Consumer Protection, Federal Trade Commission, 600 Pennsylvania
20 Avenue NW, Washington, DC 20580. The subject line must begin:
21 *FTC v. FDN Solutions LLC, and Timothy Daniels.*

22
23 **RECORDKEEPING**

24 **XI.**

25 IT IS FURTHER ORDERED that Defendants must create certain records for
26 10 years after entry of the Order, and retain each such record for five (5) years.
27 Specifically, each Corporate Defendant and each Individual Defendant for any
28 business in which that Defendant, individually or collectively with any other

1 Defendants, is a majority owner or directly or indirectly controls, must maintain
2 the following records:

- 3 A. Accounting records showing the revenues from all goods or services
4 sold, all costs incurred in generating those revenues, and the resulting
5 net profit or loss;
- 6 B. Personnel records showing, for each person providing services,
7 whether as an employee or otherwise, that person's: name, addresses,
8 and telephone numbers; job title or position; dates of service; and, if
9 applicable, the reason for termination;
- 10 C. Complaints and refund requests, whether received directly or
11 indirectly, such as through a third party, and any response;
- 12 D. All records necessary to demonstrate full compliance with each
13 provision of this Order, including all submissions to the Commission;
14 and
- 15 E. A copy of each advertisement or other marketing material.

16 **COMPLIANCE MONITORING**

17 **XII.**

18 IT IS FURTHER ORDERED that, for the purpose of monitoring
19 Defendants' compliance with this Order, including any failure to transfer any
20 assets as required by this Order:

- 21 A. Within 14 days of receipt of a written request from a representative of
22 the Commission, each Defendant must: submit additional compliance
23 reports or other requested information, which must be sworn under
24 penalty of perjury; appear for depositions; and produce documents, for
25 inspection and copying. The Commission is also authorized to obtain
26 discovery, without further leave of court, using any of the procedures
27 prescribed by Federal Rules of Civil Procedure 29, 30 (including
28 telephonic depositions), 31, 33, 34, 36, 45, and 69.

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B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to