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LODGED
MAR 29 2005
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
DEPUTY

6 Attorneys for Plaintiff
7 Federal Trade Commission

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

13 FEDERAL TRADE COMMISSION,

Case No. SA CV04-0474 CJC (JWJx)

14 Plaintiff,

15 v.

**STIPULATED FINAL JUDGMENT
AND [PROPOSED] ORDER FOR
PERMANENT INJUNCTION AND
MONETARY RELIEF AGAINST
DEFENDANT MARTHA
LEVITSKY**

16 NATIONAL CONSUMER COUNCIL,
17 INC., et al.,

18 Defendants.

NO HEARING REQUESTED

1 Plaintiff Federal Trade Commission ("FTC" or "Commission"), pursuant to
2 Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.
3 § 53(b) and § 57, filed a Complaint alleging violations of Section 5(a) of the FTC
4 Act, 15 U.S.C. § 45(a), of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part
5 310, of Subtitle A of Title V of the Gramm-Leach-Bliley Act ("GLB Act"), 15
6 U.S.C. §§ 6801 through 6809, and of the FTC's Consumer Financial Information
7 Rule ("Privacy Rule"), 16 C.F.R. Part 313. The Complaint sought an injunction and
8 other equitable relief. Concurrently, the Commission filed an *ex parte* application
9 for a Temporary Restraining Order with Asset Freeze, Appointment of Temporary
10 Receiver, and Order to Show Cause Why a Preliminary Injunction Should Not Issue
11 And a Permanent Receiver Should Not Be Appointed ("TRO").

12 On May 3, 2004, the Court granted the *ex parte* Application, appointed Robb
13 Evans and Associates LLC as Temporary Receiver over Defendants **NATIONAL**
14 **CONSUMER COUNCIL, INC.**, an Arizona corporation ("NCC-AZ"); **NATIONAL CONSUM**
15 **NATIONAL CONSUMER COUNCIL, INC.**, a California corporation ("NCC-
16 CA"); **NATIONAL CONSUMER COUNCIL, INC.**, a Nevada corporation
17 ("NCC-NV"); **LONDON FINANCIAL GROUP; NATIONAL CONSUMER**
18 **DEBT COUNCIL, LLC; SOLIDIUM, LLC; J.P. LANDIS, LLC; FINANCIAL**
19 **RESCUE SERVICES, INC.; SIGNATURE EQUITIES, LLC; M&L**
20 **SPRINGFIELD TRUST; PC HAILEY TRUST; and VIA LIDO TRUST** and
21 instituted an asset freeze. On May 14, 2004, by stipulation of the parties, and order
22 of the Court, Defendant **UNITED CONSUMERS LAW GROUP** was made part of
23 the Receivership.

24 On May 21, 2004 the Court entered Stipulated Preliminary Injunctions and
25 Orders ("PI") against all of the Defendants which continued the TRO's injunctive
26 provisions and asset freeze and appointed Robb Evans and Associates as the
27 Permanent Receiver over **NCC-AZ; NCC-CA; NCC-NV; LONDON FINANCIAL**
28 **GROUP; NATIONAL CONSUMER DEBT COUNCIL, LLC; SOLIDIUM,**

1 LLC; J.P. LANDIS, LLC; FINANCIAL RESCUE SERVICES, INC.;
2 SIGNATURE EQUITIES, LLC; UNITED CONSUMERS LAW GROUP;
3 M&L SPRINGFIELD TRUST; PC HAILEY TRUST and VIA LIDO TRUST.

4 Now plaintiff Commission and Defendant MARTHA LEVITSKY
5 (“LEVITSKY”), negotiating through their respective counsel, have agreed to a
6 settlement of this action.

7 Accordingly, the Commission and Defendant LEVITSKY consent to entry of
8 this Stipulated Final Judgment and [Proposed] Order for Permanent Injunction and
9 Monetary Relief Against Defendant MARTHA LEVITSKY (“Order”) without
10 adjudication of any issue of fact or law. The parties further agree that entry of this
11 Order in the docket by the Court will constitute notice to them of the terms and
12 conditions of the Order. Plaintiff and Defendant LEVITSKY, having requested the
13 Court to enter this Order, the Court hereby finds and orders as follows:

14
15 **FINDINGS OF FACT**

- 16 1. Defendant LEVITSKY was properly served with the Complaint,
17 Summons and TRO in this matter.
- 18 2. Defendant LEVITSKY consented to the entry of the PI against her and
19 against Defendant FINANCIAL RESCUE SERVICES, INC. (“FRS”) and was
20 properly served with the PI in this matter.
- 21 3. This Court has jurisdiction over the subject matter of the case and
22 personal jurisdiction over Defendant LEVITSKY. Venue in the Central District of
23 California is proper.
- 24 4. The alleged actions of Defendant LEVITSKY are in or affecting
25 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
- 26 5. The Complaint states a claim upon which relief can be granted against
27 Defendant LEVITSKY under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C.
28 §§ 45(a) and 53(b); under the TSR, 16 C.F.R. Part 310; under Subtitle A of Title V

1 of the GLB Act, 15 U.S.C. §§ 6801 through 6809, and under the Privacy Rule,
2 16 C.F.R. Part 313.

3 6. Plaintiff has the authority under Sections 13(b) and 19 of the FTC Act,
4 15 U.S.C. § 53(b) and § 57, to seek the relief it has requested.

5 7. Defendant LEVITSKY has not admitted to liability as to the charges in
6 the Complaint, and her consent to entry of this permanent injunction shall not be
7 interpreted to constitute an admission that she has engaged in any violations of any
8 law or regulations.

9 8. Defendant LEVITSKY waives all rights to seek judicial review or
10 otherwise challenge or contest the validity of this Order.

11 9. Defendant LEVITSKY waives any claim that she may hold against the
12 Commission, its employees, representatives or agents.

13 10. Defendant LEVITSKY waives any claim that she may hold under the
14 Equal Access to Justice Act, 28 U.S.C. § 2412 (as amended), concerning the
15 prosecution of this action to the date of this Order, and any rights to attorneys' fees
16 that may arise under said provision of law.

17 11. All parties shall bear their own costs and attorneys' fees.

18 12. Defendant LEVITSKY enters into this Order freely and without
19 coercion, and acknowledge that she understands the provisions of this Order and is
20 prepared to abide by its terms.

21 13. This Order is remedial in nature and shall not be construed as the
22 payment of a fine, penalty, punitive assessment, or forfeiture.

23 14. Entry of this Order is in the public interest.

24 25 DEFINITIONS

26 1. "Assets" means any legal or equitable interest in, right to, or claim to,
27 any real and personal property, including but not limited to chattel, goods,
28 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or

1 other deliveries, inventory, checks, notes, accounts, credits, receivables, and all cash,
2 wherever located.

3 2. **“Document”** is synonymous in meaning and equal in scope to the usage
4 of the term in Federal Rule of Civil Procedure 34(a), and includes writings,
5 drawings, graphs, charts, photographs, audio and video recordings, electronic mail
6 (“email”), computer records, and other data compilations from which information
7 can be obtained and translated, if necessary, through detection devices into
8 reasonably usable form. A draft or non-identical copy is a separate “document”
9 within the meaning of the term.

10 3. **“Defendant”** means MARTHA LEVITSKY by whatever names she
11 might be known, including but not limited to Martha K. Levitsky, Martha Elizabeth
12 Kerchen or Martha Elizabeth Kate Kerchen Levitsky.

13 4. **“Corporate Defendants”** or **“Receivership Defendants”** means
14 Defendants NCC-AZ; NCC-CA; NCC-NV; LONDON FINANCIAL GROUP;
15 NATIONAL CONSUMER DEBT COUNCIL, LLC; SOLIDIUM, LLC;
16 UNITED CONSUMERS LAW GROUP, A PROFESSIONAL CORP.; J.P.
17 LANDIS, LLC; FINANCIAL RESCUE SERVICES, INC.; SIGNATURE
18 EQUITIES, LLC; M&L SPRINGFIELD TRUST; PC HAILEY TRUST; and
19 VIA LIDO TRUST, their affiliates, subsidiaries, successors and assigns and any
20 other corporations or businesses under the control of any of them.

21 5. The terms **“and”** and **“or”** have both conjunctive and disjunctive
22 meanings to make the meaning more inclusive than exclusive.

23 6. **“Person”** means any individual, natural person, organization, or other
24 legal entity, including a corporation, partnership, proprietorship, association,
25 cooperative, government or governmental subdivision or agency, or any other group
26 or combination acting as an entity. For purposes of this Order, a “consumer” is a
27 person.

28 7. **“Debtor”** means any person indebted to a creditor or creditors.

1 8. **“Debt negotiation”** means:

2 a. the business or practice of receiving, in return for consideration,
3 or the scheduled receipt, of a debtor’s monies, or evidences thereof, for the
4 purpose of distribution among certain specified creditors in payment, or partial
5 payment, of the debtor’s obligations; or

6 b. the business or practice of acting or offering or attempting to act
7 as an intermediary between a debtor and his creditors for the purpose of
8 settling, negotiating, or in any way altering the terms of payment of any debt
9 of a debtor.

10 9. **“Credit-related products, programs or services”** means any product,
11 program or service which is advertised, offered for sale, or sold to consumers as a
12 method by which consumers may establish or obtain any extension of credit or credit
13 device, including, but not limited to, credit cards, loans, or financing, or as a method
14 to consolidate or liquidate debts.

15 10. **“Assisting others”** means knowingly providing any of the following
16 goods or services to another person or entity:

17 a. performing customer service functions, including, but not limited
18 to, receiving or responding to consumer complaints; or

19 b. formulating or providing, or arranging for the formulation or
20 provision of, any telephone sales script or any other marketing material; or

21 c. providing names of, or assisting in the generation of, potential
22 customers; or

23 d. performing marketing services of any kind.

24 11. The **“Telemarketing Sales Rule”** means the FTC Rule entitled
25 “Telemarketing Sales Rule,” 16 C.F.R. § 310.

26 12. **“Telemarketing”** means a plan, program, or campaign which is
27 conducted to induce the purchase of goods or services or a charitable contribution,
28 by use of one or more telephones and which involves more than one interstate

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

12 13. "**Outbound telephone call**" means a telephone call initiated by a
13 telemarketer to induce the purchase of goods or services or to solicit a charitable
14 contribution.

15 14. "**Telemarketer**" means any person who, in connection with
16 telemarketing, initiates or receives telephone calls to or from a customer or donor.

17 15. In connection with telemarketing, a "**customer**" means any person who
18 is or may be required to pay for goods or services offered through telemarketing.

19 16. "**Representatives**" means successors, assigns, officers, agents, servants
20 and employees of Defendant and those persons in active concert or participation with
21 them who receive actual notice of this Order by personal service or otherwise.

22 17. "**Material**" means likely to affect a person's choice of, or conduct,
23 regarding, goods, services or a charitable contribution.

24 18. "**Clearly and Conspicuously**" or "**Clear and Conspicuous**" means
25 that:

26 a. in print communications, that the message shall be in a type size
27 and location sufficiently noticeable for an ordinary consumer to read and
28 comprehend it, in print that contrasts with the background against which it

1 appears;

2 b. in communications disseminated orally, that the message shall be
3 delivered in a volume and cadence sufficient for an ordinary consumer to hear
4 and comprehend it;

5 c. in communications made through an electronic medium (such as
6 television, video, radio, and interactive media such as the Internet, online
7 services and software), that the message shall be presented simultaneously in
8 both the audio and visual portions of the communication;

9 d. in any communication presented solely through visual or audio
10 means, that the message may be made through the same means in which the
11 communication is presented:

12 i. Any audio message shall be delivered in a volume and cadence
13 sufficient for an ordinary consumer to hear and comprehend it,
14 and

15 ii. Any visual message shall be of a size and shade, with a degree of
16 contrast to the background against which it appears and shall
17 appear on the screen for a duration and in a location, sufficiently
18 noticeable for an ordinary consumer to read and comprehend it;

19 Regardless of the medium used to disseminate it, the message shall be in
20 understandable language and syntax. Nothing contrary to, inconsistent with, or in
21 mitigation of, the message shall be used in any communication.

22 19. **“Established business relationship”** means a relationship between the
23 seller and a person based on: (a) the person’s purchase, rental, or lease of the
24 seller’s goods or services or a financial transaction between the person and seller,
25 within the eighteen months immediately preceding the date of the telemarketing call;
26 or (b) the person’s inquiry or application regarding a product or service offered by
27 the seller, within the three months immediately preceding the date of a telemarketing
28 call.

1 20. “National Do Not Call Registry” means the National Do Not Call
2 Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R.
3 § 310.4(b)(1)(iii)(B).
4

5 **ORDER**

6 **I.**

7 **PROHIBITION AGAINST MATERIAL MISREPRESENTATIONS**

8 **IT IS FURTHER ORDERED** that Defendant, her successors, assigns,
9 officers, agents, servants, employees, and attorneys, and those persons or entities in
10 active concert or participation with any of them who receive actual notice of this
11 Order by personal service or otherwise, whether acting directly or through any
12 corporation, subsidiary, division, or other device, in connection with the advertising,
13 marketing, promoting, offering for sale, or sale of any good or service, are hereby
14 permanently restrained and enjoined from misrepresenting, or assisting others in
15 misrepresenting, expressly or by implication, orally or in writing, any fact material to
16 a consumer's decision to buy or accept the good or service, including but not limited
17 to the ability to reduce the amount owed by a debtor to a creditor or Defendant's
18 ability to have a positive effect on the debtor's credit report or credit history.
19

20 **II.**

21 **PROHIBITION AGAINST MATERIAL OMISSIONS**

22 **IT IS FURTHER ORDERED** that Defendant, her successors, assigns,
23 officers, agents, servants, employees, and attorneys, and those persons or entities in
24 active concert or participation with any of them who receive actual notice of this
25 Order by personal service or otherwise, whether acting directly or through any
26 corporation, subsidiary, division, or other device, in connection with the advertising,
27 promotion, offering for sale or sale of debt negotiation services or credit-related
28 products, programs or services, are hereby permanently restrained and enjoined from

1 failing to disclose, clearly and conspicuously, prior to the time when a consumer
2 purchases a service from Defendant all information material to a consumer's decision
3 to buy any debt negotiation services or credit related products, programs or services,
4 including but not limited to the following information:

5 A. That while the consumer is using the product, program or services, late
6 fees, penalties, and interest will continue to accrue on the consumer's debt until the
7 consumer's creditors accept a settlement offer and the settlement is paid;

8 B. That while the consumer is using the product, program or services, the
9 consumer's creditors may still sue to collect on his debts, and further, once a
10 judgment has been obtained, the creditors may garnish the consumer's wages;

11 C. That while the consumer is using the product, program or services, the
12 consumer's creditors may raise the interest rates applicable to his debt;

13 D. That to the extent that Defendant may be able to obtain a favorable
14 settlement with a consumer's creditor of the consumer's debt, the consumer is
15 required to treat that debt savings as income for purposes of federal and state income
16 taxes; and

17 E. That a debt settled for less than the full amount of the amount owed
18 may result in a negative notation on the consumer's credit report.

19
20 **III.**

21 **PROHIBITION AGAINST**

22 **ABUSIVE TELEMARKETING PRACTICES**

23 **IT IS FURTHER ORDERED** that, in connection with telemarketing,
24 Defendant is hereby permanently restrained and enjoined from engaging in, or
25 causing other persons to engage in, violations of the Telemarketing Sales Rule,
26 including but not limited to:

27 A. Initiating any outbound telephone call to a person's telephone number
28 on the National Do Not Call Registry to induce the purchase of goods or services

1 unless the seller proves:

- 2 1. The seller has obtained the express agreement, in writing, of such
3 person to place calls to that person. Such written agreement shall
4 clearly evidence such consumer's authorization that calls made
5 by or on behalf of a specific party may be placed to that person,
6 and shall include the telephone number to which the calls may be
7 placed and the signature of that person; or
- 8 2. The seller has an established business relationship with such
9 person and that person has not stated that he does not wish to
10 receive outbound telephone calls from the seller; or

11 B. Abandoning any outbound telephone call to a person by failing to
12 connect the call to a representative within two (2) seconds of the person's completed
13 greeting, unless the following four (4) conditions are met:

- 14 1. Defendant employs technology that ensures abandonment of no
15 more than three (3) percent of all calls answered by a person,
16 measured per day per calling campaign;
- 17 2. For each telemarketing call placed, Defendant allows the
18 telephone to ring for at least fifteen (15) seconds or four (4) rings
19 before disconnecting an unanswered call;
- 20 3. Whenever a representative is not available to speak with the
21 person answering the call within two (2) seconds after the
22 person's completed greeting, the seller or telemarketer promptly
23 plays a recorded message that states the name and telephone
24 number of the seller on whose behalf the call was placed; and
- 25 4. Defendant retains records, in accordance with 16 C.F.R. § 310.5
26 (b)-(d), establishing compliance with the preceding three
27 conditions; and

28 C. Initiating any outbound telephone call to a telephone number within a

1 given area code without first paying the required annual fee for access to the
2 telephone numbers, within that area code, that are on the National Do Not Call
3 Registry;

4 *Provided, however,* that if the Commission promulgates rules that modify or
5 supersede the Telemarketing Sales Rule, in whole or part, Defendant shall comply
6 fully and completely with all applicable requirements thereof, on and after the
7 effective date of any such rules.

8
9 **IV.**

10 **MONITORING TELEMARKETING COMPLIANCE**

11 **IT IS FURTHER ORDERED** that, in connection with any business that
12 Defendant directly or indirectly manages, controls or has a majority ownership
13 interest in, that engages in telemarketing, or assists others engaged in telemarketing,
14 Defendant is hereby permanently restrained and enjoined from:

15 A. Failing to take reasonable steps to ensure that all employees and
16 independent contractors engaged in telemarketing comply with Paragraph III of this
17 Order. Such steps shall include:

- 18 1. Establishing a procedure for receiving and responding to
19 consumer complaints of violations of the TSR or this Order; and
- 20 2. Ascertaining the number and nature of consumer complaints in
21 which each employee or independent contractor is involved;

22 B. Failing promptly to investigate fully any consumer complaint received
23 by any business to which this Paragraph applies; and

24 C. Failing to take corrective action with respect to any telemarketer whom
25 Defendant determines is not complying with this Order, which may include training,
26 disciplining, and/or terminating such sales person;

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

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V.

**PROHIBITION ON VIOLATING
THE GRAMM-LEACH-BLILEY ACT**

IT IS FURTHER ORDERED that, when acting as or on behalf of a financial institution, Defendant is hereby restrained and enjoined from violating any provision of Subtitle A of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, and implementing regulations promulgated by the Commission at 16 C.F.R. Parts 313 and 314.

VI.

SUSPENDED JUDGMENT

IT IS FURTHER ORDERED that judgment is hereby entered, jointly and severally, against Defendant LEVITSKY in the amount of **\$17,825,000.00** (seventeen million, eight hundred twenty-five thousand dollars), *provided*, however, that all of this amount except for the value of any assets described in Subparagraph VII.A., below, shall be suspended subject to the conditions set forth in Paragraph VIII of this Order.

VII.

DISGORGEMENT AND CONSUMER RESTITUTION

IT IS FURTHER ORDERED that:

A. As partial satisfaction of the monetary judgment ordered in Paragraph VI, above, Defendant LEVITSKY has agreed to the appointment of Robb Evans and Associates LLC as Permanent Receiver over Financial Rescue Services Consumer Services, Inc. ("FRC Services Inc."), Financial Rescue Support Services Inc. ("FR Support Inc."), Magical Age Arts & Entertainment Company, Inc. ("Magical Age Inc."), and M&M Enterprises, Inc. ("M&M Inc.") with all of the same rights, duties and powers as set forth in the May 21, 2004, PI which appointed Robb Evans and

1 Associates LLC as Permanent Receiver over all of the other Corporate Defendants in
2 this matter. Defendant LEVITSKY waives any interest she might have in all
3 accounts held in the name of FRC Services Inc., FR Support Inc., Magical Age Inc.,
4 or M&M Inc. The balances in those accounts shall be credited against the amount of
5 the suspended judgment owed by Defendant as set forth in Paragraph VI. For
6 purposes of this Paragraph, and any subsequent proceedings to enforce payment,
7 including but not limited to a non-dischargeability complaint filed in a bankruptcy
8 proceeding, Defendant waives any right to contest any of the allegations set forth in
9 the Complaint filed in this matter or the amount of the payment referenced in this
10 Paragraph;

11 B. Defendant's personal accounts and any other assets which were frozen
12 pursuant to the orders entered in this case, shall be unfrozen upon the entry of this
13 Order;

14 C. Defendant hereby assigns and transfers to the Commission all claims
15 and causes of action that she may now have, whether known or unknown, or which
16 she may acquire at a future date, relating to coverage and liability arising out of this
17 specific litigation only, *FTC v. National Consumer Council, et al.*, SACV04-0474
18 CJC (JWJx), against any corporate insurance policy;
19 *provided*, that nothing in this section shall be interpreted as precluding Defendant
20 from making a claim against any policy for reimbursement of reasonable defense
21 fees and costs as may be permitted by the policy;

22 D. All funds paid pursuant to this Paragraph shall be deposited into a fund
23 administered by the Commission or its agent to be used for equitable relief,
24 including but not limited to restitution and any attendant expenses for the
25 administration of any restitution fund. In the event that direct restitution to
26 consumers is wholly or partially impracticable or funds remain after restitution is
27 completed, the Commission may apply any remaining funds for such other equitable
28 relief (including consumer information remedies) as it determines to be reasonably

1 related to the practices alleged in the Complaint. Any funds not used for such
2 equitable relief shall be deposited to the Treasury as disgorgement. The
3 Commission shall have full and sole discretion to:

- 4 1. Determine the criteria for participation by individual claimants in
5 any consumer restitution program implemented pursuant to this
6 Order;
- 7 2. Determine the manner and timing of any notices to be given to
8 consumers regarding the existence and terms of such programs;
9 and
- 10 3. Delegate any and all tasks connected with such restitution
11 program to any individual, partnerships, or corporations; and pay
12 reasonable fees, salaries, and expenses incurred thereby from the
13 payments made pursuant to this Order;

14 E. Defendant expressly waives any rights she may possess to litigate the
15 issue of disgorgement. Defendant acknowledge and agree that all money paid
16 pursuant to this Order is irrevocably paid to the Commission for purposes of
17 settlement between Plaintiff and Defendant; and

18 F. Defendant shall have no right to challenge the Commission's choice of
19 remedies under this Paragraph.

20 VIII.

21 TERMINATION OF SUSPENSION

22 **IT IS FURTHER ORDERED** that the Commission's agreement to, and the
23 Court's approval of, this Order is expressly premised upon the truthfulness,
24 accuracy, and completeness of Defendant's financial condition, as represented in the
25 financial statement dated May 15, 2004, including attachments, in her asset
26 deposition on June 9, 2004, and in any other documents submitted by Defendant,
27 including all supplements to those financial statements, all of which the Commission
28

1 | relied upon in negotiating and agreeing to the terms of this Order. If, upon motion
2 | by the Commission to the Court, the Court finds that Defendant, in any of the
3 | above-referenced financial statements and information, failed to disclose any asset
4 | with a value in excess of \$1,000, materially misrepresented the value of any asset, or
5 | made any other material misrepresentation or omission, the suspension of the
6 | monetary judgment will be terminated and the entire judgment amount of
7 | \$17,825,000.00, which represents the approximate amount of consumer monetary
8 | injury, will become immediately due and payable, less any payments already made.
9 | For purposes of this Paragraph, and any subsequent proceedings to enforce payment,
10 | including but not limited to a non-dischargeability complaint filed in a bankruptcy
11 | proceeding, Defendant waives any right to contest any of the allegations set forth in
12 | the Complaint filed in this matter or the \$17,825,000.00 judgment referenced in
13 | Paragraph VI, above.

15 | IX.

16 | CUSTOMER LISTS

17 | **IT IS FURTHER ORDERED** that Defendant, her officers, agents, servants,
18 | employees, and attorneys, and all other persons or entities in active concert or
19 | participation with them who receive actual notice of this Order by personal service
20 | or otherwise, are permanently restrained and enjoined from selling, renting, leasing,
21 | transferring, or otherwise disclosing the name, address, telephone number, credit
22 | card number, bank account number, e-mail address, or other identifying information
23 | of any person who paid any money to any of the Defendants in this litigation, *FTC v.*
24 | *National Consumer Council, Inc., et al*, SACV04-0474 CJC (JWJx), or paid money
25 | to any of the Corporate Defendants, at any time prior to entry of this order, in
26 | connection with telemarketing or with the advertising, promotion, offering for sale or
27 | sale of debt negotiation services. *Provided, however*, that such identifying
28 | information may be disclosed to a law enforcement agency or as required by any

1 law, regulation, or court order.
2

3 **X.**

4 **COMPLIANCE MONITORING**

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

7 A. Within ten (10) days of receipt of written notice from a representative of
8 the Commission, Defendant shall submit additional written reports, sworn to under
9 penalty of perjury; produce documents for inspection and copying; appear for
10 deposition; and/or provide entry during normal business hours to any business
11 location in Defendant's possession or direct or indirect control for the purpose of
12 inspecting the business operation;

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

- 15 1. Obtaining discovery from any person, without further leave of
16 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,
17 33, 34, 36, and 45;
- 18 2. Posing as consumers and suppliers to Defendant's employees, or
19 any other entity managed or controlled in whole or in part by
20 Defendant, without the necessity of identification or prior notice;
21 and

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

26 *Provided, however,* that nothing in this Order shall limit the Commission's
27 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
28 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,

1 testimony, or information relevant to unfair or deceptive acts or practices in or
2 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).
3

4 **XI.**

5 **COMPLIANCE REPORTING BY DEFENDANT**

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

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

9 1. Defendant shall notify the Commission of the following:

10 a. Any changes in her residence, mailing addresses, and
11 telephone numbers, within ten (10) days of the date of such
12 changes;

13 b. Any changes in her employment status (including self-
14 employment), and any changes in the ownership of, or
15 interest in, any business entity, within ten (10) days of the
16 date of such change. Such notice shall include the name
17 and address of each business that she is affiliated with,
18 employed by, creates or forms, or performs services for; a
19 statement of the nature of the business; and a statement of
20 her duties and responsibilities in connection with the
21 business or employment; and

22 c. Any changes in Defendant's name or use of any aliases or
23 fictitious names; and

24 2. Defendant shall notify the Commission of any changes in
25 corporate structure of any business entity that she directly or indirectly
26 controls, or has an ownership interest in, that may affect compliance
27 obligations arising under this Order, including but not limited to a dissolution,
28 assignment, sale, merger, or other action that would result in the emergence of

1 a successor entity; the creation or dissolution of a subsidiary, parent, or
2 affiliate that engages in any acts or practices subject to this Order; the filing of
3 a bankruptcy petition; or a change in the corporate name or address, at least
4 thirty (30) days prior to such change, *provided* that, with respect to any
5 proposed change in the corporation about which Defendant learns less than
6 thirty (30) days prior to the date such action is to take place, she shall notify
7 the Commission as soon as is practicable after obtaining such knowledge.

8 B. One hundred eighty (180) days after the date of entry of this Order,
9 Defendant shall provide a written report to the Commission, sworn to under penalty
10 of perjury, setting forth in detail the manner and form in which she has complied
11 and is complying with this Order. This report shall include, but not be limited to:

- 12 1. Her then-current residence address, mailing addresses, and
13 telephone numbers;
- 14 2. Her then-current employment and business addresses and
15 telephone numbers, a description of the business activities of
16 each such employer or business, and her title and responsibilities
17 for each such employer or business;
- 18 3. A copy of each acknowledgment of receipt of this Order,
19 obtained pursuant to Paragraph XIII, below; and
- 20 4. Any other changes required to be reported under Subparagraph A
21 of this Paragraph XI, above.

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

25
26 Assistant Regional Director
27 Western Region, Los Angeles
28 Federal Trade Commission
10877 Wilshire Blvd, Suite 700
Los Angeles, CA 90024

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

5
6 **XII.**

7 **RECORD KEEPING PROVISIONS**

8 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
9 date of entry of this Order, Defendant and her agents, employees, officers,
10 corporations, successors, and assigns, and those persons in active concert or
11 participation with any of them who receive actual notice of this Order by personal
12 service or otherwise, in connection with any business where Defendant is the
13 majority owner of the business or directly or indirectly manages or controls the
14 business, are hereby restrained and enjoined from failing to create and retain the
15 following records:

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

1 requests;

2 E. Copies of all sales scripts, training materials, advertisements, website
3 printouts, or other marketing materials; and

4 F. All records and documents necessary to demonstrate full compliance
5 with each provision of this Order, including but not limited to, copies of
6 acknowledgments of receipt of this Order, required by Paragraph XIII,
7 below, and all reports submitted to the FTC pursuant to Paragraph XI,
8 above.

9
10 **XIII.**

11 **DISTRIBUTION OF ORDER BY DEFENDANT**

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

15 A. For any business that she controls, directly or indirectly, or in which
16 she has a majority ownership interest, she must deliver a copy of this
17 Order to all principals, officers, directors, and managers of that
18 business. Defendant must also deliver copies of this Order to all
19 employees, agents, and representatives of that business who engage in
20 conduct related to the subject matter of the Order. For current
21 personnel, delivery shall be within (5) days of service of this Order
22 upon each of the Defendants. For new personnel, delivery shall occur
23 prior to them assuming their responsibilities.

24 B. For any business where Defendant is not a controlling person of a
25 business but she otherwise engages in conduct related to the subject
26 matter of this Order, she must deliver a copy of this Order to her
27 immediate supervisor or manager of such business before engaging in
28 such conduct.

1 C. Defendant must secure a signed and dated statement acknowledging
2 receipt of the Order, within thirty days of delivery, from all persons
3 receiving a copy of the Order pursuant to this Paragraph.
4

5 **XIV.**

6 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

7 **BY DEFENDANT**

8 **IT IS FURTHER ORDERED** that, within five (5) business days of receipt
9 of this Order as entered by the Court, Defendant must submit to the Commission a
10 truthful sworn and notarized statement, or a sworn declaration pursuant to 28 U.S.C.
11 § 1746, acknowledging receipt of this Order.
12

13 **XV.**

14 **SEVERABILITY**

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

RETENTION OF JURISDICTION

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

SO STIPULATED: 1389

Dated: March 29, 2004⁵

Jennifer Larabee
Faye Chen Barnow
Raymond McKown
Kenneth Abbe
Attorneys for Plaintiff
Federal Trade Commission

Dated: 12/26, 2004

MARTHA LEVITSKY, defendant

APPROVED AS TO FORM:

Dated: _____, 2004

STEVEN HAYES, ESQ.
Attorney for Defendant

IT IS SO ORDERED, this _____ day of _____, 200__, at _____ m.

Cormac J. Carney
United States District Court Judge