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CENTRAL DIST. OF CALIF.
SANTA ANA

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Federal Trade Commission,

Plaintiff,

v.

Dennis Connelly, an individual;

Richard Wade Torkelson, a/k/a Wade Torkelson, an individual;

Joanne Garneau, a/k/a Joanne Torkelson, an individual also doing business as Prosper Financial Solutions;

Homeland Financial Services, a corporation;

National Support Services, LLC, a limited liability company;

United Debt Recovery, LLC, a limited liability company;

Freedom First Financial, LLC, a limited liability company; and

USA Debt Co, LLC, a/k/a UsaDebtCo.com, a limited liability company,

Defendants.

Case No. **SA CV 06-701 DOC (RNBx)**

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its undersigned attorneys, alleges:

1. The FTC brings this action under Sections 5(a) and 13(b)of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b), to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, the appointment of a receiver, and other equitable relief for defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the FTC's claims pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and 1345.

3. Venue in the United States District Court for the Central District of California is proper under 15 U.S. C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. **Plaintiff Federal Trade Commission** is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and to secure such equitable relief as is appropriate in each case, including restitution for injured consumers. 15 U.S.C. § 53(b).

5. **Defendant Dennis Connelly** ("Connelly") is an individual who resides in Orange County, California. Connelly founded or helped to found defendants Homeland Financial Services ("Homeland"), National Support Services, LLC ("NSS"), United Debt Recovery, LLC ("United"), and Freedom First Financial, LLC ("Freedom First'"). Connelly is or has been the Secretary and a director of Homeland. At all times material to this Complaint, acting alone or in concert with

others, Connelly has formulated, directed, controlled, or participated in the acts and practices of Homeland, NSS, United, and Freedom First, including the acts and practices set forth in this Complaint. Connelly transacts or has transacted business in the Central District of California and throughout the United States.

6. **Defendant Richard Wade Torkelson** ("Torkelson"), also known as Wade Torkelson, is an individual who resides in Orange County, California. Torkelson founded or helped to found defendants Homeland, NSS, and United. Torkelson is or has been the Chief Executive Officer, Chief Financial Officer, President, and a director of Homeland. At all times material to this Complaint, acting alone or in concert with others, Torkelson has formulated, directed, controlled, or participated in the acts and practices of Homeland, NSS, and United, including the acts and practices set forth in this Complaint. Torkelson transacts or has transacted business in the Central District of California and throughout the United States.

7. **Defendant Joanne Garneau** ("Garneau"), also known as Joanne Torkelson, is an individual who resides in Orange County, California. At all times material to this Complaint, Garneau has done business as Prosper Financial Solutions ("Prosper"). Garneau and Prosper conduct or have conducted business out of offices located at 1031 Calle Recodo Suite D, San Clemente, California, and at 31815 Camino Capistrano, San Juan Capistrano, California. At all times material to this Complaint, acting alone or in concert with others, Garneau has formulated, directed, controlled, or participated in the acts and practices of Prosper, including the acts and practices set forth in this Complaint. Garneau transacts or has transacted business in the Central District of California and throughout the United States.

8. **Defendant Homeland Financial Services** is a California corporation that has or has had its principal place of business at 2850 Red Hill Avenue, Suite 220, Santa Ana, California. Homeland has been in business since approximately

2001. At all times material to this Complaint, Homeland has advertised, marketed, promoted, offered, sold, or agreed to perform debt-negotiation services to or for consumers throughout the United States. Homeland transacts or has transacted business in the Central District of California and throughout the United States.

9. **Defendant National Support Services**, **LLC** is a California limited liability company that has or has had its principal place of business at 2850 Red Hill Avenue, Suite 220, Santa Ana, California. NSS has been in business since at least 2004. At all times material to this Complaint, NSS has advertised, marketed, promoted, offered, sold, or agreed to perform debt-negotiation services to or for consumers throughout the United States. NSS transacts or has transacted business in the Central District of California and throughout the United States.

10. **Defendant United Debt Recovery, LLC** is a Nevada limited liability company that has or has had its principal place of business at 2151 Michelson Drive, Suite 170, Irvine, California. United has been in business since at least 2004. At all times material to this Complaint, United has advertised, marketed, promoted, offered, sold, or agreed to perform debt-negotiation services to or for consumers throughout the United States. United transacts or has transacted business in the Central District of California and throughout the United States.

11. **Defendant Freedom First Financial, LLC** is a Wyoming limited liability company that has or has had its principal place of business at 1274 Center Court Drive, Suite 107, Covina, California. Freedom First has been in business since at least 2004. At all times material to this Complaint, Freedom First has advertised, marketed, promoted, offered, sold, or agreed to perform debt-negotiation services to or for consumers throughout the United States. Freedom First transacts or has transacted business in the Central District of California and throughout the United States.

12. **Defendant USA Debt Co, LLC** ("USA Debt Co."), also known as UsaDebtCo.com, is a Wyoming limited liability company that has or has had its

principal place of business at 1274 Center Court Drive, Suite 107, Covina, California. USA Debt Co. has been in business since at least 2004. At all times material to this Complaint, USA Debt Co. has advertised, marketed, promoted, offered, sold, or agreed to perform debt-negotiation services to or for consumers throughout the United States. USA Debt Co. transacts or has transacted business in the Central District of California and throughout the United States.

COMMON ENTERPRISE

13. Homeland, NSS, United, Prosper, Freedom First and USA Debt Co. (or "corporate defendants") have operated together as a common enterprise while engaging in the deceptive acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, and business functions. Individual Defendants Connelly, Torkelson and Garneau have formulated, directed, and/or controlled, or had authority to control, or participated in the acts and practices of the corporate defendants that comprise the common enterprise.

COMMERCE

14. At all times relevant to this Complaint, defendants have maintained a substantial course of business in the advertising, marketing, promoting, offering for sale and sale of debt-negotiation services, in or affecting commerce, including the acts and practices alleged herein, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

15. Defendant Homeland was founded by defendants Connelly and Torkelson. Homeland began operating a debt-negotiation business in or about 2001. Homeland held out its debt-negotiation program (or "program") as a means for

consumers to dramatically reduce their credit-card and other unsecured debts, so that they could pay off these debts for substantially less than the amount owed.

16. Through approximately mid-2004, Homeland promoted and sold its debt-negotiation program directly to consumers through an in-house sales staff and various third-party sales offices and/or sales representatives, including defendant Prosper.

17. In or about August 2004, Homeland reorganized its operation, in response to numerous complaints that had been filed against the company with the Better Business Bureau. First, Connelly and Torkelson formed defendant United, and transferred Homeland's in-house sales operation to United. Second, Connelly and Torkelson formed defendant NSS, which took over the processing and servicing of new debt-negotiation clients. NSS has continued to obtain new clients not only through United and Prosper, but also through sales offices around the country.

18. Following a consumer's enrollment, the sales office passes the contract on to NSS for servicing, even though sales contracts are ostensibly between the consumer and the sales office. NSS then pays the sales office a percentage of the fee received from the client. NSS provides so-called "back end" service, which includes, among other things, negotiating settlements with consumers' creditors, providing customer service, and administering customer accounts.

19. Defendants have promoted their program to prospective purchasers through a variety of means, including Internet websites and flyers.

20. Homeland, NSS, Connelly and Torkelson have made available one or more website templates to the various sales offices. Many if not all of these sales offices, including defendants United, Prosper, Freedom First, and USA Debt Co., have used one or more of these templates. As a result, the websites for these offices are very similar to each other in appearance and content.

21. Websites on which defendants have promoted their services include, without limitation, the following:

a. www.homelandfinancial.net;

b. www.prosperfinancial.net;

c. www.freedomfirstfinancial.com;

d. www.uniteddebtrecovery.com;

e. www.uniteddebtservices.com;

f. www.united-debt-recovery.com; and

g. www.usadebtco.com.

22. Each of defendants' websites has represented to consumers that defendants will negotiate with the consumer's unsecured creditors and will obtain favorable settlements that will allow the consumer to pay off his debts to these creditors for a substantially lower amount than the consumer currently owes, such as 40% to 60% of the consumer's outstanding debt.

23. For example, the website for Prosper has represented that consumers who enroll in the company's program will "Pay back Half" of what they currently owe, and that "[g]enerally, we reduce your debt by 40-60% of the current total."

24. Defendants' websites claim that defendants can settle a variety of unsecured debt, including credit cards, unsecured loans, and medical bills. A dominant theme of defendants' websites is that consumers can rely on defendants to improve the consumer's financial situation and to relieve consumers of the stress of dealing with creditors.

25. Defendants' websites encourage consumers to request a free analysis of their financial situation either by calling defendants' toll-free numbers or by completing and submitting an online form requesting more information.

26. Calls and website inquiries are handled by telemarketers in the defendants' sales offices. Homeland, NSS, Connelly and Torkelson provide or have provided the sales offices with scripts.

27. Defendants' telemarketers, like defendants' websites, claim that defendants will negotiate the consumer's unsecured debt down to 40% to 60% of the

amount the consumer owes his creditors. Defendants' telemarketers further tell consumers that under defendants' program, consumers will have an affordable monthly payment and will be out of debt within a limited period of time, typically within three years.

28. Defendants' telemarketers typically advise consumers that if they participate in defendants' debt-negotiation program, defendants will immediately contact the consumer's creditors and inform them that defendants now represent the consumer. Telemarketers represent that consumers will then receive few if any calls from creditors. Telemarketers also represent that consumers will obtain more favorable settlements if they stop making their monthly payments to their creditors.

29. In addition, defendants' telemarketers advise consumers who inquire about the effects of defendants' program on the consumer's credit rating that the program will have only a minimal, negative effect which will last only the length of time during which the consumer is in the program. Defendants also represent that they will negotiate settlements with consumers' creditors pursuant to which the creditors will stop reporting unfavorable items of information to credit reporting agencies.

30. Defendants charge their clients a nonrefundable fee. The defendants' fee is expressed as a percentage of the amount of debt that the consumer owes his unsecured creditors at the beginning of the program. Since 2002, the fee has risen from 12% to 15% of the consumer's total debt.

31. Defendants require clients to make a substantial down payment toward the fee within the first two to three months of enrolling in the program. The down payment consumers are required to pay is typically 30% to 40% of defendants' total fee. Consumers pay the remainder of defendants' fee in monthly installments over the course of the following six to twelve months. Defendants typically require consumers to pay the fee by automatic withdrawal from the consumer's checking or savings account.

32. After consumers enroll in defendants' program, they receive a packet of documents from defendants, which defendants refer to as a "Welcome Packet." The "Welcome Packet" includes form letters that consumers are instructed to fill out and send to their creditors. The form letters instruct the consumer's creditors to cease communicating with the consumer and to communicate instead with defendants. Defendants also advise consumers to send defendants copies of correspondence from creditors.

33. As described below, participation in defendants' program does not produce the positive results that consumers expect at the time they enroll.

34. Defendants typically do not commence settlement negotiations immediately. To the extent that defendants initiate negotiations with any of their clients' creditors, they typically do not begin doing so until after the consumer has made the required down payment on defendants' fee, which is typically a minimum of two to three months after the consumer has entered defendants' program and has ceased making payments to his creditors.

35. To the extent defendants negotiate a settlement on any of a consumer's several accounts, they rarely if ever negotiate settlements with all of a consumer's creditors. In fact, defendants fail to negotiate substantial reductions of debt on most of their clients' accounts. Even when defendants succeed in negotiating a settlement on one of a client's several accounts, the amount the client is required to pay under the settlement is typically significantly higher than 40% to 60% of the amount the client owed to the creditor at the time he enrolled in defendants' program.

36. Participation in defendants' program also does little to abate or prevent calls from creditors. Within approximately one to three months after enrolling in defendants' programs, consumers who stop paying their creditors on defendants' instructions begin receiving calls from creditors or collection agencies inquiring about the payments that are past due. When consumers call defendants to inquire or to complain about calls from creditors, consumers often have difficulty reaching

anyone, as their calls are put on hold indefinitely or are not answered, and their messages are not returned. Defendants are particularly nonresponsive after consumers have paid most or all of the defendants' fee. When consumers do succeed in reaching defendants, they are often told to simply tell their creditors to contact defendants and then to hang up.

37. Following defendants' advice to stop making payments to creditors results in other adverse consequences, as well.

a. Contrary to defendants' representations, creditors typically do not wait indefinitely to get paid. In numerous instances, after consumers who enroll in defendants' program have ceased making payments and defendants have failed to contact the consumer's creditors to offer a settlement, consumers are sued by one or more of their creditors or by one or more debt collection agencies attempting to collect on their accounts. Litigation against defendants' clients by their creditors or debt collection agencies has often resulted in the garnishment of the consumer's wages by the creditor or debt collection agency.

b. As a result of not making their minimum monthly payments, additional interest accrues on the consumer's outstanding account balances, interest rates increase, late charges are assessed, and other fees are imposed.

c. In many cases, consumers who enroll in defendants' program suffer a substantial negative impact to their credit ratings, as a result of ceasing payment to their creditors. Pursuant to the Fair Credit Reporting Act ("FCRA"), credit reporting agencies are permitted to report accurate negative information such as late payments, charge-offs, collections, judgments and garnishments for seven years. (15 U.S.C. §1681c) The FCRA also prohibits creditors from knowingly reporting false information (15 U.S.C. § 1681s-2(a)(1)), and thus prohibits creditors from changing accurate information they have previously reported.

38. Typically within six or seven months of enrolling in defendants' debt-negotiation program, most consumers realize that their financial situation is not improving but instead is getting worse, and cancel their participation in the program. By this time most consumers find that the balances on the accounts that they trusted defendants to settle have increased substantially as a result of penalties, fees, interest and other charges. Many consumers who have retained defendants' services for the purpose of improving their financial situation have experienced such a substantial increase in their debt that they have filed for protection under the bankruptcy laws.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

39. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.

40. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

(As to All Defendants)

Misrepresentation of Defendants' Program

41. In numerous instances in connection with the advertising, marketing, promoting, offering for sale or sale of their debt-negotiation services, defendants or their employees or agents have represented, expressly or by implication, that by enrolling in defendants' debt-negotiation program, consumers will be able to pay off their credit-card and other unsecured debts for a substantially reduced amount, such as 40 to 60 percent of the total amount owed to their creditors.

42. In truth and in fact, in numerous instances, by enrolling in defendants' debt-negotiation program, consumers are not able to pay off the debts they submit to

defendants' program for a substantially reduced amount, such as 40 to 60 percent of the total amount owed to their creditors.

43. Therefore, defendants' representation as set forth in Paragraph 41 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

COUNT II

(As to All Defendants)

Failure to Disclose Likelihood of Lawsuit

44. In numerous instances, in connection with the advertising, marketing, promoting, offering for sale or sale of their debt-negotiation services, defendants or their employees or agents have represented to consumers who enroll in defendants' debt-negotiation program that more favorable settlements will be reached with consumers' creditors if they cease making monthly payments to their creditors, and that consumers can rely on defendants to negotiate settlements with consumers' creditors.

45. Defendants have failed to adequately disclose to consumers who enroll in defendants' program that when consumers stop paying their creditors, there is a substantial likelihood that one or more of their creditors will sue the consumer.

46. This additional information, described in Paragraph 45, would be material to consumers in deciding whether to participate in defendants' program.

47. Defendants' failure to disclose the material information described in Paragraph 45, in light of the representations described in Paragraph 44, therefore constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.§ 45(a).

COUNT III

(As to All Defendants)

Failure to Disclose Increase in Debt

48. In numerous instances, as alleged in Paragraph 44 above, in connection with the advertising, marketing, promoting, offering for sale or sale of their debt-negotiation services, defendants or their employees or agents have represented to consumers who enroll in defendants' debt-negotiation program that more favorable settlements will be reached with consumers' creditors if they cease making monthly payments to their creditors.

49. Defendants have failed to adequately disclose to consumers who enroll in defendants' program that when consumers stop paying their creditors, the balances on their credit accounts will increase as a result of interest accruing on their accounts, increases to their interest rate, and the imposition of late fees and other charges.

50. This additional information, described in Paragraph 49, would be material to consumers in deciding whether to participate in defendants' program.

51. Defendants' failure to disclose the material information described in Paragraph 49, in light of the representations described in Paragraph 48, therefore constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.§ 45(a).

COUNT IV

(As to All Defendants)

Misrepresentation of Effect on Credit Rating

52. In numerous instances, in connection with the advertising, marketing, promoting, offering for sale or sale of their debt-negotiation services, defendants or their employees or agents have represented, expressly or by implication, that any negative information that appears on a consumer's credit report as a result of

participating in defendants' program will be removed upon completion of the program.

53. In truth and in fact, negative information that appears on a consumer's credit report as a result of participating in defendants' program is likely to remain on the consumer's credit report for at least several years beyond the consumer's participation in defendants' program.

54. Therefore, defendants' representation as set forth in Paragraph 52 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

55. Defendants' violations of Section 5 of the FTC Act as set forth above have caused and continue to cause substantial injury to consumers throughout the United States. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

56. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and rescission and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

57. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C.§ 53(b), and the Court's own equitable powers, requests that this Court:

1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. Permanently enjoin defendants from violating the FTC Act as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act as alleged herein, including but not limited to the rescission or reformation of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies;

4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper; and

5. Order any further relief that the Court deems appropriate.

Dated August 1, 2006

Respectfully submitted,

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