

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION and
STATE OF WASHINGTON,

Plaintiffs,

v.

DEBT SOLUTIONS, INC., a Florida
corporation, also doing business as DSI
Financial, Inc., and Accelerated Financial, Inc.;
DSI FINANCIAL, INC., a Florida corporation,
also doing business as Accelerated Financial,
Inc.; DSI DIRECT, INC., a Florida
corporation; PACIFIC CONSOLIDATION
SERVICES, INC., a Washington corporation,
also doing business as DSI Financial, Inc., and
Accelerated Financial, Inc.; KENNETH
SCHWARTZ, individually and as an officer of
Debt Solutions, Inc., DSI Financial, Inc., and
DSI Direct, Inc.; JENNIFER RUTH
WHALEN, aka Jennifer Ruth Krizan,
individually and as an officer of Pacific
Consolidation Services, Inc., and DSI Direct,
Inc.; DAVID SCHWARTZ, individually and
as a manager of Pacific Consolidation
Services, Inc.; and GREG MOSES,
individually and as a manager of Pacific
Consolidation Services and DSI Direct, Inc.,

Defendants.

Case No. CV06-0298JLR

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AS TO ALL
DEFENDANTS**

This matter comes before the Court on the stipulation of Plaintiffs Federal Trade Commission (“FTC” or “Commission”) and the State of Washington (“State”), and Defendants Debt Solutions, Inc.,

1 also doing business as DSI Financial, Inc., and Accelerated Financial, Inc.; DSI Financial, Inc., also
2 doing business as Accelerated Financial, Inc.; DSI Direct, Inc.; Pacific Consolidation Services, Inc.,
3 also doing business as DSI Financial, Inc., and Accelerated Financial, Inc.; Kenneth Schwartz; Jennifer
4 Ruth Whalen; David Schwartz; and Greg Moses (hereafter "Defendants").

5 On March 6, 2006, Plaintiffs jointly filed a Complaint for Injunctive and Other Equitable
6 Relief, including restitution. Plaintiff FTC filed the Complaint under Sections 5(a), 13(b), and 19 of
7 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the
8 Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, and Plaintiff
9 State filed the Complaint under Section 4(a) of the Telemarketing and Consumer Fraud and
10 Abuse Prevention Act, 15 U.S.C. § 6103 (a), the Washington Unfair Business Practices-Consumer
11 Protection Act ("Washington CPA"), Wash.Rev.Code § 19.86.020, and the Washington Commercial
12 Telephone Solicitation Act ("Washington CTSA"), Wash.Rev.Code §19.158. The Plaintiffs also
13 moved for an *Ex Parte* Application for Temporary Restraining Order with Asset Freeze, which
14 application was denied, Order Permitting Limited Expedited Discovery, and Order to Show Cause Why
15 a Preliminary Injunction Should Not Issue pursuant to Rule 65 of the Federal Rules of Civil Procedure.
16 On April 3, 2006, this Court entered a Preliminary Injunction.

17 Now Plaintiffs and Defendants, negotiating through their respective counsel, have agreed to
18 settlement of this action and consent to entry of this Stipulated Final Judgment and Order for
19 Permanent Injunction and Other Equitable Relief ("Order") without adjudication of any issue of fact or
20 law and entry of this Order shall constitute a full, complete, and final settlement of all matters in
21 dispute arising from the Complaint in this action to the date of entry of this Order. The parties further
22 agree that entry of this Order in the docket by the Court will constitute notice to them of the terms and
23 conditions of the Order. Plaintiffs and Defendants, having requested the Court to enter this Order, the
24 Court hereby finds and orders as follows:

25 **FINDINGS OF FACT**

- 26 1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
27 Venue in the Western District of Washington is proper.
- 28 2. The alleged activities of Defendants are in or affecting commerce, as defined in Section

1 4 of the FTC Act, 15 U.S.C. § 44.

2 3. The allegations of the Complaint support relief against Defendants under Sections 5(a),
3 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, the Telemarketing and Consumer
4 Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, the Washington CPA, Wash. Rev. Code
5 § 19.86.020, and the Washington CTSA, Wash. Rev. Code §19.158, to seek the relief it has requested.

6 4. Plaintiff FTC has the authority under Sections 13(b) and 19 of the FTC Act, 15 U.S.C.
7 §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C.
8 §§ 6101-6108, to seek the relief it has requested. Plaintiff State of Washington has the authority under
9 Section 4(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6103
10 (a), the Washington CPA, Wash. Rev. Code § 19.86.020, and the Washington CTSA, Wash. Rev. Code
11 §19.158, to seek the relief it has requested.

12 5. Defendants have not admitted to liability as to the charges in the Complaint, and their
13 consent to entry of this Order shall not be interpreted to constitute an admission that they have engaged
14 in any violations of any law or regulation.

15 6. Defendants acknowledge that they have read the provisions of this Order and have
16 agreed to abide by them. Defendants consent freely and without coercion to entry of this Stipulated
17 Final Judgment and Order for Permanent Injunction in the interest of settling this litigation, and
18 acknowledge that they understand the provisions of this Order and are prepared to abide by its terms.
19 At all times, Defendants have been represented by counsel, including during the negotiations that led to
20 this Order.

21 7. Defendants waive all rights to seek appellate review or otherwise challenge or contest
22 the validity of this Order.

23 8. Defendants waive and release any claim they may have against the FTC and the State,
24 and their employees, representatives, or agents.

25 9. Defendants waive all rights that may arise under the Equal Access to Justice Act, 28
26 U.S.C. § 2412.

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

1 11. Entry of this Order is in the public interest.

2
3 **DEFINITIONS**

4 A. **“Assets”** means any legal or equitable interest in, right to, or claim to any real or
5 personal property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general
6 intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits,
7 receivables (as those terms are defined in the Uniform Commercial Code), and all cash, wherever
8 located.

9 B. **“Assisting others”** means providing any of the following goods or services to another
10 person: (1) serving as an officer, director, or consultant; (2) performing customer service functions,
11 including, but not limited to, receiving or responding to customer complaints; (3) formulating or
12 providing, or arranging for the formulation or provision of, any script or any other material for
13 communicating with customers or potential customers; (4) providing the names of, or assisting in the
14 generation of, potential customers, including, but not limited to, arranging for the automated delivery
15 of messages to potential customers; (5) performing marketing services of any kind; or (6) providing
16 any other substantial help or aid, while knowing or consciously avoiding knowing that the person
17 receiving assistance is engaged in an act or practice that is prohibited by this Order.

18 C. **“Consumer”** means an actual or potential purchaser, customer, or licensee.

19 D. **“Debt Negotiation or Debt Elimination Product, Service, or Program”** means any
20 product, service, or program that includes or purports to include:

- 21 (1) The receipt of a debtor’s monies, or evidences thereof, for the purpose of
22 distribution among creditors in payment, or partial payment, of the debtor’s
23 obligations; or
24 (2) Acting, or offering or attempting to act, as an intermediary between a debtor and
25 his or her creditors for the purpose of settling, negotiating, or in any way altering
26 the terms of payment of any debt; or
27 (3) Showing or purporting to show consumers how to restructure, consolidate,
28 liquidate, accelerate, settle, or alter the terms of payment of any debt; or

1 (4) Providing any service to a consumer relating to managing his or her debts.

2 E. **“Defendants”** means Debt Solutions, Inc., also doing business as DSI Financial, Inc.,
3 and Accelerated Financial, Inc.; DSI Financial, Inc., also doing business as Accelerated Financial, Inc.;
4 DSI Direct, Inc.; Pacific Consolidation Services, Inc., also doing business as DSI Financial, Inc., and
5 Accelerated Financial, Inc.; Kenneth Schwartz; Jennifer Ruth Whalen; David Schwartz; and Greg
6 Moses, and each of them, by whatever names each might be known.

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

12 G. **“Person”** means any individual, group, unincorporated association, limited or general
13 partnership, corporation, or other entity.

14 H. **“Telemarketing Sales Rule” or “Rule”** means the FTC Rule entitled “Telemarketing
15 Sales Rule,” 16 C.F.R. § 310.

16 I. **“Telemarketing”** is as defined in 16 C.F.R. § 310.2 (cc).

17 J. **“Outbound telephone call”** is as defined in 16 C.F.R. § 310.2 (u).

18 K. **“Telemarketer”** is as defined in 16 C.F.R. § 310.2 (bb).

19 L. In connection with telemarketing, a **“customer”** means any person who is or may be
20 required to pay for goods or services offered through telemarketing.

21 M. **“Representatives”** means successors, assigns, officers, agents, servants, and employees
22 of Defendants and those persons in active concert or participation with them who receive actual notice
23 of this Order by personal service or otherwise.

24 N. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods,
25 services, or a charitable contribution.

26 O. **“Clearly and conspicuously” or “clear and conspicuous”** means:

27 (1) In print communications, that the message shall be in a type size and location
28 sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that

1 contrasts with the background against which it appears;

2 (2) In communications disseminated orally, that the message shall be delivered in a
3 volume and cadence sufficient for an ordinary person to hear and comprehend it;

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

8 (4) In any communication presented solely through visual or audio means, that the
9 message shall be made through the same means in which the communication is presented:

10 (a) Any audio message shall be delivered in a volume and cadence sufficient
11 for an ordinary consumer to hear and comprehend it, and

12 (b) Any visual message shall be of a size and shade, with a degree of
13 contrast to the background against which it appears and shall appear on
14 the screen for a duration and in a location, sufficiently noticeable for an
15 ordinary consumer to read and comprehend it;

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

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

21
22 **I. BAN ON TELEMARKETING OR SALE OF ANY DEBT NEGOTIATION
23 OR DEBT ELIMINATION PRODUCT, SERVICE, OR PROGRAM**

24 **IT IS THEREFORE ORDERED** that Defendants Kenneth Schwartz and Jennifer Whalen are
25 permanently restrained and enjoined from engaging or participating, or assisting others who are
26 engaged or participating, directly or indirectly, or through any business entity or other device, in the
27 telemarketing, advertising, promotion, offering of sale, or sale of any debt negotiation or debt
28 elimination product, program, or service. Nothing in this Order shall be construed as being an

1 exception to this Section.

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3 **II. PROHIBITIONS AGAINST MATERIAL MISREPRESENTATIONS**

4 **IT IS THEREFORE ORDERED** that Defendants, their officers, agents, servants, and
5 employees, and those persons in active concert or participation with any of them who receive actual
6 notice of this Order by personal service or otherwise, whether acting directly or through any
7 corporation, subsidiary, division, or other device, in connection with the advertising, marketing,
8 promoting, offering for sale, or sale of any debt negotiation or debt elimination product, service, or
9 program, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in
10 misrepresenting, expressly or by implication, orally or in writing, any fact material to a consumer's
11 decision to purchase or accept the good, service, or program, including, but not limited to, the
12 following:

13 A. That consumers who purchase Defendants' product, service, or program will have their
14 credit card or loan interest rates reduced substantially as a result of Defendants negotiating reduced
15 interest rates with consumers' creditors;

16 B. That consumers who purchase Defendants' product, service, or program will save a
17 substantial amount of money in a short time as a result of Defendants negotiating reduced interest rates
18 with consumers' creditors;

19 C. That consumers who purchase Defendants' product, service, or program will be able to
20 pay off their debt substantially faster without increasing their monthly payments as a result of
21 Defendants negotiating reduced interest rates with consumers' creditors;

22 D. That consumers who purchase Defendants' product, service, or program will be able to
23 reduce their monthly payments on their credit cards or loans as a result of Defendants negotiating
24 reduced interest rates with consumers' creditors;

25 E. That Defendants have special relationships and contacts with consumers' credit card
26 companies or lenders that enable them to negotiate lower interest rates for consumers;

27 F. That Defendants' product, services, or program is endorsed or approved by any entity,
28 including, but not limited to, the Financial Standards Council of Canada and the Registered Financial

