

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 06-61851-CIV-UNGARO/O'SULLIVAN

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

RANDALL L. LESHIN,  
RANDALL L. LESHIN, P.A., also d/b/a Express Consolidation, Inc.,  
EXPRESS CONSOLIDATION, INC.,  
CHARLES FERDON,  
CONSUMER CREDIT CONSOLIDATION, INC.,  
and MAUREEN A. GAVIOLA,

Defendants.

FILED by \_\_\_\_\_ D.C.

MAY 05 2008

STEVEN M. LARIMORE  
CLERK U. S. DIST. CT.  
S. D. of FLA. - MIAMI

**STIPULATED INJUNCTION AND ORDER AS TO DEFENDANTS RANDALL L. LESHIN, RANDALL L. LESHIN, P.A., EXPRESS CONSOLIDATION, INC., AND CHARLES FERDON**

This matter comes before the Court on the stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission") and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon (hereinafter "Defendants").<sup>1</sup>

The Commission and Defendants submit the following Stipulated Injunction and Order to resolve the claims set forth in Plaintiff's Amended Complaint for Injunctive and Other Equitable Relief. The Commission and Defendants consent to the entry of this Order as a settlement of this

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<sup>1</sup> Two parties named as defendants in the Amended Complaint in this action, Maureen A. Gaviola and Consumer Credit Consolidation, Inc., are not parties to this Stipulated Injunction and Order and, with the exception of the caption, references to Defendants herein do not include these parties.

action, and agree that entry of this Order shall constitute a full, complete and final settlement of all matters in dispute between the Commission and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon arising from the Amended Complaint.

Upon the joint motion of the Commission and Defendants Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc., and Charles Ferdon, the Court makes the following findings and enters judgment in this action as follows:

**FINDINGS OF FACT**

1. This Court has jurisdiction over the subject matter of this case and the Defendants for purposes of this Stipulation, entry of this Order and any proceedings to enforce this Order.
2. The Commission and Defendants have agreed to this Order to settle all matters in dispute arising from the Amended Complaint in this action. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by any of the Defendants of any violation of any law or regulation, or that Defendants engaged in unlawful or deceptive conduct alleged in the Amended Complaint. This Order does not constitute and should not be construed as approval or endorsement by the Commission of any practices of Defendants, past or prospective, nor construed as an admission by the Commission that (i) Defendants are qualified to provide debt consolidation services under state law; (ii) Express Consolidation, Inc. has been operated as a not-for-profit corporation; (iii) Express Consolidation, Inc. qualifies as a

tax-exempt organization under 26 U.S.C. § 501(c)(3); or (iv) that any of the claims alleged in the Amended Complaint lack merit.

3. The Commission and Defendants acknowledge that they have read the provisions of this Order and have agreed to abide by them. The Commission and Defendants consent freely and without coercion to entry of this Order in the interest of settling this litigation, and acknowledge that they understand the provisions of this Order and are prepared to abide by its terms. At all times, the Commission and Defendants have been represented by counsel, including during the negotiations that led to this Order.
4. The Commission and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order.
5. Defendants waive and release any claim they may have against the Commission and its employees, representatives or agents arising from this action to date. The Commission waives and releases any claim it may have against the Defendants and their employees, representatives or agents arising from this action to date.
6. Each party shall bear its own costs and attorneys' fees. Defendants waive all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, arising from the Amended Complaint.
7. This Order should not be construed as payment of a fine, penalty, punitive assessment or forfeiture, and the monetary judgment provided herein is based on the amount of money the Commission would have sought as restitution for consumers if the parties had not stipulated to this Order.
8. Entry of this Stipulation and Order is in the public interest.

**DEFINITIONS**

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

- A. “Corporate Defendants” means Express Consolidation, Inc. and Randall L. Leshin, P.A., individually or collectively.
- B. “Individual Defendants” means Randall L. Leshin and Charles Ferdon, individually or collectively.
- C. “Defendants” means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
- D. “Application fee” means a fee that is charged in whole or in part for preparing, negotiating or securing a schedule of payments for a consumer and is charged even if the consumer declines, rejects or otherwise does not make any payments pursuant to this schedule of payments.
- E. “Assets” means all real and personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes,” and “securities” (as these terms are defined in the Uniform Commercial Code), lines of credit, and all cash, wherever located.
- F. “Assisting others” means providing any of the following goods or services to another person: (i) serving as an officer, director, or consultant; (ii) performing customer service functions, including, but not limited to, receiving or responding to customer complaints; (iii) formulating or providing, or arranging for the formulation or provision of, any script or any other material for communicating with customers or potential customers; (iv)

providing names of, or assisting in the generation of contacts to, potential customers, including, but not limited to, arranging for the automated delivery of messages to potential customers; (v) performing marketing services of any kind; or (vi) providing any other substantial help or aid, while knowing or consciously avoiding knowing that the person receiving assistance is engaged in an act or practice that is prohibited by this Order.

- G. “Billing information” means any data that enables any person to access a customer’s or donor’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card account.
- H. “Clear and conspicuous” means the required disclosures are:
- (1) not accompanied by other communications that are contrary to, are inconsistent with, or mitigate the required disclosures;
  - (2) made in the same language as that principally used in any accompanying advertisement;
  - (3) readily noticeable and, if conveyed through an interactive medium, not conveyed through avoidable hyperlinks or similar methods; and
  - (4) (a) if conveyed through text (*e.g.*, printed publications or words displayed on the screen of an electronic device), in a type of a size, weight, and color that contrasts with the background, is readable and draws attention to the disclosures;  
(b) if conveyed through oral or audio communications (*e.g.*, telephone, radio or streaming audio), delivered at a cadence and audible level that is intelligible to the receiving audience and, in any event, is no faster than the cadence principally

used in the accompanying oral or audio communications and at least the same audible level as that principally used in the accompanying oral or audio communications;

(c) if conveyed through video communications (*e.g.*, television, streaming video, online services), in text that is consistent with Subparagraph (4)(a) of this definition and appears on the screen for a duration sufficient for an ordinary consumer to read and comprehend the disclosures.

I. “Debt consolidation service” means:

- (1) receiving money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer’s obligation;
- (2) arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer’s obligation;
- (3) exercising direct or indirect control, or arranging for the exercise of such control, over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer’s obligation; or
- (4) acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of altering the terms of payment of the consumer’s obligation.

- J. “Debt management plan” means a schedule of payments that an individual has agreed to make to an intermediary as part of a plan to repay a creditor or group of creditors through an intermediary.
- K. “Documents” and “records” mean writings, drawings, charts, graphs, photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained, and are equal in scope and synonymous in meaning to the usage of the term documents in Federal Rule of Civil Procedure 34(a).
- L. “Defendants’ Financial Statements” means the financial disclosure questionnaire dated December 18, 2007, and signed by Charles Ferdon; the document entitled “Federal Trade Commission Financial Statement of Individual Defendant,” dated December 19, 2007, and signed by Randall L. Leshin; the document entitled “Federal Trade Commission Financial Statements of Corporate Defendant” (Randall L. Leshin, P.A.) dated December 19, 2007, signed by Defendant Randall L. Leshin; the documents entitled “Financial Statement of Corporate Defendant” (Express Consolidation, Inc.), dated February 22, 2007 and February 14, 2008, and signed by Randall L. Leshin; the Profit and Loss Statement and Balance Sheet for Express Consolidation, Inc., certified by David Culver and provided to the Commission on or about February 6, 2008; the List of Financial Institutions/Accounts of accounts of Randall L. Leshin and Randall L. Leshin, P.A. signed by Randall L. Leshin and dated January 24, 2008; the list of accounts of Randall L. Leshin, P.A. captioned “ATTACHMENT A” signed by Randall L. Leshin and dated January 24, 2008; 1099-MISC forms produced as EXPRESS-PROD-5TH-8th-002489-94; all documents that reaffirm or are identified as exhibits, addendums, supplements, or

attachments to these Financial Statements; and records of Sun Trust bank account disclosures provided through online access under the Stipulated Interim Injunction entered in this action on January 29, 2007.

- M. “Existing clients” means persons who: (i) have signed an agreement for debt consolidation services with Randall L. Leshin, Randall L. Leshin, P.A. (including contracts under the name “Debt Management Counseling Center”), or Debt Management Counseling Center, Inc.; (ii) have not notified Defendants that they are canceling such services; and (iii) have made a payment for such services to Randall L. Leshin, Randall L. Leshin, P.A., or Debt Management Counseling Center, Inc. during the sixty (60) days prior to the date this Order is entered.
- N. “Holding Account” means the SunTrust bank account in the name of Randall L. Leshin, P.A. with account number xxxxxxxxx8395, which is referenced in Paragraph VI.D.3 of the Stipulated Interim Injunction entered in this action on January 29, 2007.
- O. “National Do Not Call Registry” means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).
- P. “Nonprofit entity” means an entity that does not distribute any part of its income or profit to members, directors, or officers, or is described as being “nonprofit,” “not-for-profit” or dedicated primarily or exclusively to charitable, religious or educational purposes. This definition shall be construed consistent with applicable state law where the nonprofit entity is incorporated or organized.
- Q. “Outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.



- R. “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- S. Express Consolidation, Inc. is “qualified to provide debt management services” in a state as that phrase is used in this Order if:
- (1) The state does not issue licenses for entities that offer or provide debt consolidation services and, thirty (30) days after the date this Order is entered, Express Consolidation, Inc. has fulfilled any requirements imposed by state law to provide such services, including any registration, reporting, audit, insurance, escrow account or trust account requirement; or
  - (2) The state issues licenses for entities that offer or provide debt consolidation services and, sixty (60) days after this Order is entered, Express Consolidation, Inc. (a) has a valid, current license from the state authority that issues licenses for entities that offer or provide debt consolidation services; or (b) Express Consolidation, Inc. has a pending application and the state has unambiguously stated in writing that it will permit Express Consolidation, Inc. to offer debt consolidation services to residents of that state who are currently being serviced by Express Consolidation, Inc. for debt consolidation services based on the pending application.
- T. “Representatives” means Defendants’ successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise.

- U. “Savings or estimated savings” means a representation, directly or by implication, that agreeing to purchase services will save a consumer time or money, including but not limited to a representation that purports to describe the difference or estimated difference between the cost or duration of payments if services are purchased and the cost or duration of payments if the purchaser adopts an alternative to the services that is identified directly or by implication.
- V. “Seller” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.
- W. “Telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.
- X. “Telemarketing” is defined by the Telemarketing Sales Rule, 16 C.F.R. § 310.2(cc), and means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include

providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

- Y. "Telemarketing Sales Rule" or "Rule" means the Rule promulgated by the FTC entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310, the text of which is included as an Appendix to this Order.
- Z. "Unexpended trust money" means the sum of all money paid by or on behalf of a person who has contracted for debt consolidation services less any amounts that have already been paid to creditors on behalf of the client and less fees that are authorized by the client.

## **ORDER**

### **I.**

#### **PROHIBITION AGAINST DECEPTIVE MARKETING PRACTICES**

**IT IS HEREBY ORDERED** that, in connection with the advertising, promotion, offering, or sale of debt consolidation services, Defendants and their Representatives are hereby restrained and enjoined from making or assisting others in making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity, including, but not limited to:

- A. Falsely representing or assisting others in falsely representing that Defendants offer, sell or provide contracts for debt consolidation services with a nonprofit entity; that the debt consolidation services that Defendants offer, sell or provide are services of a nonprofit entity; or that fees for the debt consolidation services that Defendants offer, sell or provide are collected or controlled by a nonprofit entity;

- B. Falsely representing or assisting others in falsely representing that the only fee charged for debt consolidation services is a monthly administrative fee;
- C. Falsely representing or assisting others in falsely representing that Defendants do not charge an application fee for debt consolidation services;
- D. Falsely representing or assisting others in falsely representing that fees for debt consolidation services represent a deposit or are refunded upon completion of the debt consolidation services;
- E. Falsely representing or assisting others in falsely representing the costs of or fees for debt consolidation services;
- F. Falsely representing or assisting others in falsely representing that the debt consolidation services will lower a consumer's monthly payment or total debt;
- G. Falsely representing or assisting others in falsely representing that purchasing debt consolidation services will result in savings or estimated savings to the purchaser;
- H. Falsely representing or assisting others in falsely representing that debt consolidation services include services that will improve a consumer's credit record, history, or rating;
- I. Falsely representing or assisting others in falsely representing that debt consolidation services include services that will protect against deterioration of a consumer's credit rating, against negative credit history or against derogatory credit information;
- J. Falsely representing or assisting others in falsely representing the benefits that consumers will receive from debt consolidation services;
- K. Falsely representing or assisting others in falsely representing that Defendants or any entity on whose behalf Defendants offer debt consolidation services is authorized by state law to

provide debt consolidation services, that Defendants or any entity on whose behalf Defendants offer debt consolidation services is qualified under state law to provide debt consolidation services, or that Defendants or any entity on whose behalf Defendants offer debt consolidation services is licensed or able to obtain a license required by state law to provide debt consolidation services;

L. Falsely representing or assisting others in falsely representing that Defendants or any entity on whose behalf Defendants offer debt consolidation services adjusts or has adjusted fees for the debt consolidation services to comply with state requirements; and

M. Representing to consumers that Defendant Express Consolidation, Inc. is a nonprofit or tax-exempt entity; *provided*, it shall not be considered a violation of this Order for Express Consolidation, Inc. to respond to a consumer who has asked it to describe its corporate or tax status by (1) stating that Express Consolidation, Inc. is a nonprofit corporation, so long as the State of Florida recognizes Express Consolidation, Inc. as a Florida nonprofit corporation; (2) stating that Express Consolidation, Inc. is a tax-exempt 501(c)(3) organization, so long as the Internal Revenue Service has not revoked its determination that the Express Consolidation, Inc. is an organization exempt from federal income tax under 26 U.S.C. § 501(c)(3); or (3) giving a truthful response that does not directly or indirectly misrepresent the actual corporate or tax status of Express Consolidation, Inc.

For purposes of this Paragraph, “material” means likely to affect a person’s choice of, or conduct regarding, goods or services or a charitable contribution.

**II.**

**PROHIBITION AGAINST DECEPTIVE TELEMARKETING PRACTICES**

**IT IS FURTHER ORDERED** that, in connection with telemarketing, Defendants and their Representatives are hereby restrained and enjoined from engaging in, or assisting others in engaging in:

- A. Falsely representing, expressly or by implication, that Defendants offer, sell or provide contracts with a nonprofit entity; that the services that Defendants offer, sell or provide are services of a nonprofit entity; or that fees for the services that Defendants offer, sell or provide are collected or controlled by a nonprofit entity;
- B. Falsely representing, expressly or by implication, that the only fee charged for Defendants' services is a monthly administrative fee;
- C. Falsely representing, expressly or by implication, that Defendants do not charge an application fee;
- D. Falsely representing, expressly or by implication, that fees represent a deposit or are refunded upon completion of a payment schedule;
- E. Falsely representing, expressly or by implication, the costs of or fees for services;
- F. Falsely representing, expressly or by implication, that services will lower a consumer's monthly payment or total debt;
- G. Falsely representing, expressly or by implication, that purchasing services will result in savings or estimated savings to the purchaser;
- H. Falsely representing, expressly or by implication, that a contract includes services that will improve a consumer's credit record, history, or rating;

I. Falsely representing, expressly or by implication, that a services contract includes services that will protect against deterioration of a consumer's credit rating, against negative credit history or against derogatory credit information;

J. Falsely representing, expressly or by implication, the benefits that consumers will receive from debt consolidation services;

K. Falsely representing, expressly or by implication, that Defendants or any entity on whose behalf Defendants offer services is authorized by state law to provide such services, that Defendants or any entity on whose behalf Defendants offer services is qualified under state law to provide such services, or that Defendants or any entity on whose behalf Defendants offer services is licensed or able to obtain a license required by state law to provide such services;

L. Falsely representing, expressly or by implication, that Defendants or any entity on whose behalf Defendants offer services adjusts or has adjusted fees for the services they offer to comply with state requirements; and

M. Making any other false or misleading statements to induce consumers to pay for services or to induce a charitable contribution in violation of the deceptive practices prohibitions of the Telemarketing Sales Rule, 16 C.F.R. § 310.3.

For purposes of this Paragraph, "material" means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

### **III.**

#### **PROHIBITION AGAINST SUBMITTING BILLING INFORMATION WITHOUT EXPRESS INFORMED CONSENT**

**IT IS FURTHER ORDERED** that Defendants and their Representatives are hereby restrained and enjoined from directly or indirectly receiving payment from a consumer for goods

or services, or causing billing information to be submitted for payment, unless and until the following information has been disclosed to the consumer truthfully, in a clear and conspicuous manner:

- A. The total costs to purchase, receive, or use, and the quantity of, any goods or services for which payment is sought;
- B. All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;
- C. If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy;
- D. If the seller, Defendants or their Representatives makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy; and
- E. If the seller has a policy of not making refunds to debt consolidation service clients unless the clients complete repayment of debts in a particular manner, a statement of all conditions that a client must satisfy to receive such refunds.

For purposes of this Paragraph, "material" means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution. Under this paragraph, "receiving payment from a consumer for goods or services" includes: (i) requesting that a consumer send full or partial payment by check, money order, wire, cash, or any other means; (ii) asking a consumer for billing information that will or could be used to obtain payment for goods or services; or (iii) sending a courier to pick up payment for goods or services offered, or directing a consumer to have a courier pick up payment or authorization for payment.



**IV.**

**PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

**IT IS FURTHER ORDERED** that, in connection with telemarketing, Defendants and their Representatives are hereby permanently restrained and enjoined from engaging in, or causing other persons to engage in, or assisting other persons to engage in, violations of the Telemarketing Sales Rule, including but not limited to:

A. Delivering recorded messages to persons who answer an outbound telephone call, disconnecting an outbound telephone call when a person answers without connecting the call to a sales representative, or otherwise failing to connect an outbound telephone call answered by a person to a sales representative within two (2) seconds of the person's completed greeting, *provided, however*, that outbound telephone calls that deliver recorded messages do not violate this provision if the following four (4) conditions are met:

1. The person who initiates the calls employs technology that ensures that no more than three (3) percent of all calls answered by a person are not connected to a sales representative within two (2) seconds of the person's completed greeting, measured per day per calling campaign;
2. The person who initiates the calls allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;
3. Whenever a sales representative is not available to speak with the individual who answers the call within two (2) seconds after the individual's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed; and

4. Defendants and their Representatives retain records, in accordance with 16 C.F.R. § 310.5 (b)-(d), establishing compliance with the preceding three conditions.

B. Initiating any outbound telephone call to a person's telephone number on the National Do Not Call Registry, unless the telephone call is:

1. a solicitation to induce charitable contributions;
2. to a business;
3. to a person who has expressly consented to receive outbound telemarketing calls from the seller on whose behalf the call is made and Defendants can prove that (a) the person's consent is recorded in a written agreement that clearly evidences such person's authorization that calls made by or on behalf of the seller may be placed to that person, and (b) such agreement includes the telephone number to which the calls may be placed and the signature of that person; or
4. to a person who has not stated that he or she does not wish to receive outbound telephone calls from the seller on whose behalf the call is made and Defendants can prove that the person (a) purchased, rented, or leased the seller's goods or services, or engaged in a financial transaction with the seller, within the eighteen (18) months immediately preceding the date of the telephone call; or (b) submitted an inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call;

C. Initiating any outbound telephone call to a person who has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose

goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited; or

D. Initiating any outbound telephone call to a telephone number within a given area code when the applicable annual fee, if any, for access to the telephone numbers within that area code that are on the National Do Not Call Registry has not been paid by or on behalf of the seller on whose behalf the telephone call is made, unless the telephone call is:

1. a solicitation to induce charitable contributions;
2. to businesses, or
3. on behalf of a seller who initiates, or causes others to initiate, telephone calls solely to persons that satisfy the conditions in Subparagraphs IV.B.3 and IV.B.4 of this Order, and does not access the National Do Not Call Registry for any other purpose.

*Provided, however,* if the Commission promulgates rules that, in whole or part, modify or supersede the Telemarketing Sales Rule, on or after the effective date of any such rules, (i) Defendants shall comply fully and completely with all applicable requirements of such rules and (ii) telephone calls that are permitted by such rules do not constitute a violation of this Order if Defendants satisfy all the applicable requirements of such rules.

#### V.

#### **DEFENDANTS' OBLIGATION TO MONITOR TELEMARKETING PERSONNEL**

**IT IS FURTHER ORDERED** that any Individual Defendant who directly or indirectly manages, controls or has a majority ownership interest in any business that is engaged in telemarketing is hereby permanently restrained and enjoined from:

A. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies;

B. Failing to take corrective action with respect to any telemarketer or sales representative that is not complying with this Order, which may include training, disciplining, and/or terminating such sales person; and

C. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in telemarketing comply with Paragraphs I - IV of this Order.

Such steps shall include:

1. Monitoring to ensure that lists of phone numbers used to contact customers include only numbers that are authorized to be called under the Telemarketing Sales Rule;
2. Establishing a procedure for receiving and responding to consumer complaints of violations of the Telemarketing Sales Rule;
3. Ascertaining the number and nature of consumer complaints regarding potentially violative telephone calls or sales practices in which each employee or independent contractor is involved;
4. Examining the initial and rebuttal scripts, training materials, notices, contracts and sales materials used by all employees and independent contractors to ascertain whether they comply with Telemarketing Sales Rule; and
5. Monitoring a sample of telemarketing calls by having non-commissioned employees or contractors listen to telemarketers' oral presentations and keep records regarding any misrepresentations;

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

**VI.**  
**PROHIBITED DEBT CONSOLIDATION PRACTICES**

**IT IS FURTHER ORDERED** that Defendants and their Representatives are hereby restrained and enjoined from:

- A. Charging fees for debt consolidation services that are prohibited by or exceed applicable restrictions under state law;
- B. Executing any contract for debt consolidation services that provides for fees that exceed a restriction on such fees imposed by the state in which the person contracting to pay such fees resides;
- C. Failing to comply with a licensing, registration, reporting, audit, insurance, escrow account or trust account requirement for providers of debt consolidation services that has been adopted by a state in which Defendants offer debt consolidation services;
- D. Offering, entering into, or accepting the transfer of, a contract for debt consolidation services with a person when Defendants are not, at the time of the offer, transfer or execution of the contract, in compliance with legal requirements imposed by the state in which the person resides, including any requirements concerning licensing, registration, reporting, audit, insurance, escrow accounts or trust accounts imposed by the state's law regulating debt consolidation services, *provided that* this provision does not prohibit conduct permitted by other provisions of this Order where Express Consolidation, Inc. is, as defined in this Order is qualified to provide debt management services in a state;

E. Conferring or receiving any benefit that would result in Express Consolidation, Inc. failing to operate in conformity with the Florida Not For Profit Corporation Act, Fla. Stat. §§ 617.011-617.2103, including any conduct that would distribute dividends, income, profits or benefits to Express Consolidation, Inc.'s members, directors, or officers except as permitted under the Florida Not For Profit Corporation Act;

F. Failing to deposit any funds that have been paid to Defendants for the purpose of paying creditors of a person for whom Defendants have agreed to provide debt consolidation services in a separate trust account or accounts that are clearly labeled and designated as trust accounts and are used for the purpose of making such payments to creditors; and

G. Failing to maintain in any trust accounts used for debt consolidation services a cash balance that is equal to or greater than the sum of the balances of the unexpended trust money held for each client.

## VII.

### APPOINTMENT OF TEMPORARY MONITOR

**IT IS FURTHER ORDERED** that:

A. Gerald Wald, Esq. is hereby appointed as Temporary Monitor for the purpose of monitoring certain payments and accounts, providing notice to existing customers, and performing other duties described more fully below. The Monitor shall be the agent of this Court in acting as Monitor under this Order, and shall be accountable directly to this Court. The Monitor may seek guidance and instructions from the Court whenever needed to perform his or her duties under this Order.

B. The Monitor shall promptly open the following bank accounts for the purpose of implementing the provisions of this Order:

1. An account or accounts designated as the *Transition Trust Account* to hold funds in trust for the payment of client obligations.
2. An account designated as the *Temporary Monitor's Account*.
3. An account designated as the *Fee Account*.

The Monitor shall establish all three accounts with a bank where Defendants currently maintain accounts. The Monitor shall establish the Transition Trust Account and the Temporary Monitor's Account so that these accounts are controlled solely by the Monitor. The Monitor shall establish the Fee Account so that both Defendants and the Monitor have authority to withdraw funds from the account. The Monitor shall establish the Fee Account and the Transition Trust Account so that funds may be transferred between these accounts and accounts used by Defendants for debt consolidation services through online banking.

C. The Monitor shall:

1. Verify that Defendants have complied with their obligation to transfer sufficient funds to the Transition Trust Account to satisfy Subparagraph VIII.B;
2. Verify that, from the date that the transfer described in Subparagraph VIII.D is completed until the Monitor completes his or her duties, the funds in the Transition Trust Account equal or exceed the unexpended trust money received by Randall L. Leshin, Randall L. Leshin, P.A., Express Consolidation, Inc. and Debt Management Counseling Center, Inc.;
3. Monitor Defendants' compliance with their obligations to deposit payments from existing clients into the Transition Trust Account and Fee Account, as described below;

4. Approve the release of trust funds to Defendants or other debt consolidation service providers for the purpose of making distributions to creditors of existing clients;
5. Ensure that funds in the Transition Trust Account are transferred to Express Consolidation, Inc. in a manner that allows distributions on behalf of existing clients to be made on time;
6. Send the notices described below in Subparagraphs IX.C and IX.D, receive and review client responses to the notices;
7. Monitor Defendants' implementation of the responses of existing clients to the notices described below;
8. Monitor the transfer of the debt management plans of existing clients, client records and funds pursuant to this Order;
9. Within seventy (70) days of the date that this Order is entered, and otherwise upon request from the Court, prepare, serve and file with this Court a report describing the funding of the accounts opened by the Monitor to implement this Order, the distribution of notices required by this Order, the implementation of responses to those notices, and Defendants' compliance with this Order;
10. Select an Independent Auditor pursuant to Paragraph XVII; and
11. At the conclusion of his or her duties, disburse the remaining funds, if any, in the Temporary Monitor's Account and Transition Trust Account in accordance with Paragraph XV.C.2, and file with the Court a report describing how the funds in these accounts were used by the Monitor.



D. The Monitor shall have power to enter into agreements in connection with the performance of his or her duties, including, but not limited to, the retention and employment of investigators, attorneys, accountants, and technical specialists of the Monitor's choice to assist, advise, or represent the Monitor.

E. The Monitor shall serve without bond or other security.

F. Defendants and their Representatives shall fully cooperate with and assist the Monitor with all reasonable requests of the Monitor relating to implementation of this Order, including giving the Monitor or his or her agents access to documents and personnel of Express Consolidation, Inc., Randall L. Leshin, P.A., and Debt Management Counseling Center, Inc., related to the Monitor's duties under this Order. This cooperation and assistance shall include, but not be limited to, providing information to the Monitor that the Monitor deems necessary in order to exercise the authority and discharge the responsibilities of the Monitor under this Order, and providing any password, key, combination or security code required to access to such information from a computer, electronic file, or other storage place or medium to which access is restricted.

G. The Monitor shall complete his or her duties within one hundred and fifty days (150) after the date that this Order is entered, but any party or the Monitor may request that the Court extend the Monitor's term due to unforeseen circumstances or other good cause.

#### **VIII.**

##### **FUNDING OF TRANSITION TRUST, FEE AND TEMPORARY MONITOR'S ACCOUNTS**

**IT IS FURTHER ORDERED** that:

A. Defendant Randall L. Leshin shall:

