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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 FEDERAL TRADE COMMISSION,  
17  
18 Plaintiff,  
19  
20 v.  
21 FDN SOLUTIONS, LLC,  
a limited liability company,  
also d/b/a Everest Debt Solutions,  
1800debtsettlement.com, and  
22 everestdebtrelief.com;  
23  
24 TIMOTHY DANIELS,  
individually and as an officer  
of FDN Solutions, LLC,  
25  
26 Defendants.

Case No. SA12-cv-820 JST (ATK)

**COMPLAINT FOR  
PERMANENT INJUNCTION  
AND OTHER EQUITABLE  
RELIEF**

27 Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

28 1. The FTC brings this action under Sections 13(b) and 19 of the Federal  
Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the

1 Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing  
2 Act”), 15 U.S.C. § 6101 *et seq.*, to obtain preliminary and permanent injunctive  
3 relief, rescission or reformation of contracts, restitution, the refund of monies paid,  
4 disgorgement of ill-gotten monies, and other equitable relief against FDN Solutions,  
5 LLC, also d/b/a Everest Debt Solutions, 1800debtsettlement.com, and  
6 everestdebtrelief.com; and Timothy Daniels (collectively, “Defendants”) for acts or  
7 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the  
8 FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, in connection with  
9 the marketing and sale of debt relief services.

### 10 **JURISDICTION AND VENUE**

11 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§  
12 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

13 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) and  
14 15 U.S.C. § 53(b).

### 15 **PLAINTIFF**

16 4. The FTC is an independent agency of the United States Government  
17 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC  
18 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or  
19 affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §  
20 6101 *et seq.* Pursuant to the Telemarketing Act, the FTC promulgated and  
21 enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive  
22 telemarketing acts or practices.

23 5. The FTC is authorized to initiate federal district court proceedings, by  
24 its own attorneys, to enjoin violations of the FTC Act and the TSR, to secure such  
25 equitable relief as may be appropriate in each case, including rescission or  
26 reformation of contracts, restitution, the refund of monies paid, and the  
27 disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B),  
28 57b, 6102(c), and 6105(b).

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**DEFENDANTS**

6. Defendant FDN Solutions, LLC, also d/b/a Everest Debt Solutions, 1800debtsettlement.com, and everestdebtrelief.com (“FDN”), is a Florida limited liability company with its principal places of business located at 17621 Irvine Boulevard, Suite 209, Tustin, California and 13051 Linebaugh Avenue, Building P, Suite 101, Tampa, Florida. FDN advertises and offers debt relief services through the Internet. FDN transacts or has transacted business in this District and throughout the United States.

7. Timothy Daniels is a managing member and owner of FDN, as well as FDN’s registered agent for service of process in California. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices set forth in this Complaint. Timothy Daniels resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

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**COMMERCE**

8. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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**DEFENDANTS’ BUSINESS PRACTICES**

9. Since at least 2007, Defendants have offered debt relief services to consumers having difficulty with their personal finances. Defendants’ services include a commercial debt settlement program whereby they offer, for a fee, to resolve consumers’ unsecured debts by negotiating settlements of their balances for less than the consumer owes. Defendants have induced consumers to join their debt relief program by claiming that they will substantially reduce consumers’ debts.

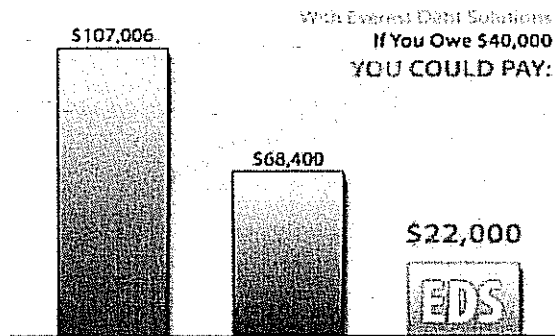
10. Defendants have advertised on the Internet through paid search results

1 on Google's search engine and Google ads on third party websites. Defendants'  
2 advertisements have included the following representations:

- 3 • "Reduce Debt 70% Want Proof?";
- 4 • "Ohio Residents Can Reduce Debt By 70%!";
- 5 • "Reduce Your Debt Up To 60%"; and
- 6 • "Save up to 70% On Credit Card Debt."

7 11. After clicking on these Google advertisements, consumers have been  
8 directed to one of Defendants' numerous websites, which have included, but are  
9 not limited to, the following: everestdebtsolutions.com, everestdebtrelief.com,  
10 everestsolutions.com, and 1800debtsettlement.com.

11 12. Defendants have made various statements on their websites regarding  
12 the savings consumers would obtain by enrolling in Defendants' program. On  
13 everestdebtsolutions.com, the following bar chart has appeared prominently:



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25 The chart has been accompanied by text stating, "With Everest Debt Solutions If  
26 You Owe \$40,000 YOU COULD PAY:" and the bar labeled "EDS" states \$22,000  
27 (i.e., a savings of 45 percent). Defendants have not explained the two other bars in  
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1 the chart, but the chart clearly indicates that, if using alternatives to Everest Debt  
2 Solutions, consumers would pay more than \$22,000, *i.e.*, \$68,400 or \$107,006.

3 13. Next to the chart on the homepage, the website has included a section  
4 for “News & Updates Regarding Everest Debt Solutions.” This section has listed a  
5 “34% Settlement With HSBC” on October 28, 2010 as a recent update, indicating  
6 that a recent customer paid 34% of the debt owed.

7 14. Under the link “Proven Results” on the homepage,  
8 Everestdebtsolutions.com has included the following examples of “Recent  
9 Settlements”:

- 10 • “total balance due \$8,071.44. . . was settled for \$404.00 in 3  
11 payments” (*i.e.* a savings of 95 percent); and
- 12 • “total balance due [of] \$26,654.51. . . was settled for  
13 \$9,332.58,” (*i.e.* a savings of 65 percent);

14 15. On the same page, the website has included purported settlement  
15 letters from creditors. The letters have shown a settlement for \$2,687.40 on a  
16 current balance of \$13,436.98 (a savings of 80 percent) and a settlement for \$7,200  
17 on a balance of \$23,896.08 (a savings of 70 percent).

18 16. Everestdebtsolutions.com also has included the following statements  
19 throughout its website:

- 20 • A “perk of using Everest” is to “reduce debts up to 50%”;
- 21 • On the “Start Now” page, Everest states, “We Can REDUCE  
22 Your Debt By as Much as 40% to 70%!”;
- 23 • “Debt settlement can reduce your debt by 60%”; and
- 24 • “Generally, we reduce your debt by 40-60%.”

25 A footnote appended to the last statement has stated that the estimate was “based  
26 on yearly averages of settlements done for our clients nationwide.”

27 17. In addition, Everestdebtsolutions.com has contained statements which  
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1 purported to be actual and genuine testimonials from customers of  
2 Everestdebt solutions.com and which trumpeted good experiences and substantial  
3 savings achieved. For example, one testimonial on the website stated:

4 "Everest Debt Solutions was able to drop my credit card debt down  
5 62%! They are truly a Godsend! God Bless. Alicia S., Lake Charles,  
6 LA."

7 Alicia S., however, is not in fact a customer of Everestdebt solutions.com, and the  
8 testimonial is not actual and genuine.

9 18. Defendants' websites have provided consumers with a toll-free  
10 telephone number they can use to contact Defendants. Everestdebt solutions.com  
11 also has displayed an online contact form where consumers could enter their name,  
12 email, telephone number, state, and amount of debt to "apply online" and receive a  
13 "free quote." Defendants have used the information provided to contact consumers  
14 directly.

15 19. Defendants' representatives reinforce the claims of substantial  
16 reductions in debt via telephone. For example, one representative has stated: "We  
17 . . . actually negotiate the balances of your debt down 40 to 60 percent of what you  
18 currently owe."

19 20. After FDN receives a consumer's application materials, which  
20 include, among other things, a fine print contract entitled "Debt Settlement  
21 Agreement," that application is transferred to a back-end servicer for negotiation of  
22 the consumer's debts.

23 21. Consumers enrolled in Defendants' debt relief program make monthly  
24 payments to a third party for two to three years in order to save up funds for the  
25 settlement of their debts and Defendants' fees. Since October 27, 2010,  
26 Defendants charged a fee equal to 30 percent of the savings achieved for each  
27 settlement.

28 22. In many instances, consumers who enroll in debt settlement programs

1 experience a number of negative consequences that are common to the debt  
2 settlement industry. When consumers make monthly payments into their third  
3 party savings accounts rather than paying their creditors, their balances increase  
4 and creditors might engage in collections efforts or initiate legal actions against  
5 consumers to recover outstanding debts. Indeed, at least one version of  
6 Defendants' Debt Settlement Agreement states, in small, buried language:

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8 "If Client does not make required minimum payments to Client's  
9 creditors . . . Client's actions will probably be reported to  
10 consumer reporting agencies as late, delinquent, charged-off or  
11 past due balances. Client's creditor may also raise the interest rate  
12 on Client's account and impose other penalties (late charges).  
13 Client's account balance may continue to grow as the creditor adds  
14 accrued interest, late fees, over-limit fees and penalties. Client's  
15 balance may increase during the term of this Agreement.

16  
17 Consumers who enroll in Defendants' program are part of a financially vulnerable  
18 population and most are in no position to endure the increased financial hardship  
19 that results from failing to pay creditors for months or years. In fact, many  
20 consumers drop out of Defendants' program before obtaining any settlements of  
21 their accounts or obtaining the promised reduction in debt.

22 23. Defendants' above representations were unsubstantiated and have  
23 misrepresented a material aspect of a debt relief service. Among other things,  
24 Defendants have not factored in their fees when they have calculated the amount  
25 by which a consumer's debt would be reduced. Nor have they factored in  
26 customers who do not complete the program.

1 **VIOLATIONS OF THE FTC ACT**

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

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

6 **Count I**

7 26. In connection with the advertising, marketing, promoting, offering for  
8 sale, or sale of debt relief services, Defendants have represented directly or  
9 indirectly, expressly or by implication, that they will substantially reduce  
10 consumers’ debts, including but not limited to, by 40 to 60 percent.

11 27. In truth and in fact, the representations set forth in Paragraph 26 of  
12 this Complaint were not substantiated at the time the representations were made.

13 28. Therefore, the making of the representations, as set forth in Paragraph  
14 26, constitutes a deceptive act or practice in or affecting commerce in violation of  
15 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16 **Count II**

17 29. Through the means described in Paragraph 17, Defendants have  
18 represented, directly or indirectly, expressly or by implication, that the testimonial  
19 by Alicia S. on Everestdebtsolutions.com represents an actual and genuine  
20 consumer testimonial from one of Defendants’ customers.

21 30. The representation set forth in Paragraph 29 is false and misleading.  
22 Therefore, the making of the representation as set forth in Paragraph 29 of this  
23 Complaint constitutes a deceptive act or practice in or affecting commerce in  
24 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25 **VIOLATION OF THE TELEMARKETING SALES RULE**

26 31. Congress directed the FTC to prescribe rules prohibiting abusive and  
27 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15  
28 U.S.C. §§ 6101-6108, in 1994. The FTC adopted the original Telemarketing Sales



1 Rule (“TSR”) in 1995, extensively amended it in 2003, and amended certain  
2 sections thereafter.

3 32. In 2010, the FTC amended the TSR to address the telemarketing of  
4 debt relief services. The amendments, among other things, prohibit  
5 misrepresentations about material aspects of debt relief services. Prior to 2010,  
6 except for certain specified transactions, the TSR exempted from coverage  
7 telephone calls initiated by a customer in response to an advertisement through any  
8 medium, other than direct mail solicitations. 16 C.F.R. § 310.6(b)(5). Effective  
9 September 27, 2010, the amended TSR modified Section 310.6(b)(5) also to  
10 exclude from this exemption telephone calls initiated by a customer in response to  
11 an advertisement relating to debt relief services. 16 C.F.R. § 310.6(b)(5).  
12 Therefore, these telephone calls are covered by the TSR.

13 33. The TSR defines “seller” as “any person, who in connection with a  
14 telemarketing transaction, provides, offers to provide, or arranges for others to  
15 provide goods or services to the customer in exchange for consideration.” 16  
16 C.F.R. § 310.2(aa). The TSR defines “telemarketer” as “any person who, in  
17 connection with telemarketing, initiates or receives telephone calls to or from a  
18 customer or donor.” 16 C.F.R. § 310.2(cc). Defendants are a “seller” or  
19 “telemarketer” engaged in “telemarketing” as those terms are defined by the TSR,  
20 16 C.F.R. § 310.2 (aa), (cc), and (dd). Defendants are a seller or telemarketer of  
21 “debt relief services,” defined as “any program or service represented, directly or  
22 by implication, to renegotiate, settle, or in any way alter the terms of payment or  
23 other terms of the debt between a person and one or more unsecured creditors or  
24 debt collectors, including, but not limited to, a reduction in the balance, interest  
25 rate, or fees owed by a person to an unsecured creditor or debt collector.” 16  
26 C.F.R. § 310.2(m).

27 34. Effective September 27, 2010, the TSR prohibits sellers or  
28 telemarketers from “[m]isrepresenting, directly or by implication, in the sale of

1 goods or services . . . any material aspect of any debt relief service, including, but  
2 not limited to, the amount of money or the percentage of the debt amount that a  
3 customer may save by using such service.” 16 C.F.R. § 310.3(a)(2)(x).

4 35. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.  
5 § 6102(c) and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation  
6 of the TSR constitutes an unfair or deceptive act or practice in or affecting  
7 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### 8 **Count III**

9 36. Since at least October 27, 2010, in connection with the telemarketing  
10 of debt relief services, Defendants have misrepresented, directly or indirectly,  
11 expressly or by implication, material aspects of the debt relief services, including  
12 the amount of money or the percentage of the debt amount that a customer will  
13 save by using Defendants’ services.

14 37. Defendants’ acts or practices, as described in Paragraph 36, constitute  
15 deceptive telemarketing acts or practices that violate Section 310.3(a)(2)(x) of the  
16 TSR, 16 C.F.R. § 310.3(a)(2)(x).

### 17 **CONSUMER INJURY**

18 38. Consumers have suffered and will continue to suffer substantial injury  
19 as a result of Defendants’ violations of the FTC Act and the TSR. In addition,  
20 Defendants have been unjustly enriched as a result of their unlawful acts or  
21 practices. Absent injunctive relief by this Court, Defendants are likely to continue  
22 to injure consumers, reap unjust enrichment, and harm the public interest.

### 23 **THE COURT’S POWER TO GRANT RELIEF**

24 39. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court  
25 to grant injunctive and such other relief as the Court may deem appropriate to halt  
26 and redress violations of any provision of law enforced by the FTC. The Court, in  
27 the exercise of its equitable jurisdiction, may award ancillary relief, including  
28 rescission or reformation of contracts, restitution, the refund of monies paid, and

1 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any  
2 provision of law enforced by the FTC.

3 40. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the  
4 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief  
5 as the Court finds necessary to redress injury to consumers resulting from  
6 Defendants' violations of the TSR, including the rescission or reformation of  
7 contracts, and the refund of money.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act,  
10 15 U.S.C. §§ 53(b) and 57(b), Section 6(b) of the Telemarketing Act, 15 U.S.C. §  
11 6105(b), and the Court's own equitable powers, requests that the Court:

12 A. Award Plaintiff such preliminary injunctive and ancillary relief as  
13 may be necessary to avert the likelihood of consumer injury during the pendency  
14 of this action and to preserve the possibility of effective final relief, including but  
15 not limited to, temporary and preliminary injunctions.

16 B. Enter a permanent injunction to prevent future violations of the FTC  
17 Act and the TSR by Defendants.

18 C. Award such relief as the Court finds necessary to redress injury to  
19 consumers resulting from Defendants' violations of the FTC Act and the TSR,  
20 including but not limited to, rescission or reformation of contracts, restitution, the  
21 refund of monies paid, and the disgorgement of ill-gotten monies.


22 D. Award Plaintiff the costs of bringing this action, as well as such other  
23 and additional relief as the Court may determine to be just and proper.

1 Respectfully submitted,

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5 WILLARD K. TOM

6 General Counsel

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9 Dated: 5/22/12



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