

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No: 6:16-cv-714-Orl-41TBS

**EXPAND, INC. and AYMAN A.
DIFRAWI,**

Defendants.

ORDER

THIS CAUSE is before the Court on the parties' Joint Motion for Entry of Stipulated Order for Permanent Injunction and Monetary Judgment ("Joint Motion," Doc. 2). The United States requests that this Court enter the proposed Stipulated Order for Permanent Injunction and Monetary Judgment ("Proposed Permanent Injunction," Doc. 2-1) and retain jurisdiction to enforce the permanent injunction.

For the reasons set forth in the Joint Motion and pursuant to 15 U.S.C. § 53(b) and this Court's inherent equitable authority, the Joint Motion will be granted and the Proposed Permanent Injunction will be made a part of this Order.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Joint Motion for Entry of Stipulated Order for Permanent Injunction and Monetary Judgment (Doc. 2) is **GRANTED**.
2. The Clerk is directed to terminate all other pending motions and close this case.

It is **FURTHER ORDERED** that:

3. This Court makes the following findings:

- a. This Court has jurisdiction over this matter and venue is proper in this Court.
 - b. The parties consent to the entry of the Permanent Injunction and final judgment, but Defendants neither admit nor deny any of the allegations of the Complaint (Doc. 1) unless otherwise specified in the Permanent Injunction.
 - c. Defendants agree to waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order and agree to bear their own costs and attorneys' fees.
 - d. Defendants and the Federal Trade Commission agree to waive all rights to appeal or otherwise challenge or contest the validity of this Order and Permanent Injunction.
4. The following Permanent Injunction is entered:

PERMANENT INJUNCTION

I. DEFINITIONS

- A. "Clearly and Conspicuously" means that a required disclosure is easily noticeable and easily understandable by ordinary consumers, including in all of the following ways:
1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication that includes a representation requiring the disclosure and is made through both visual and audible means, such as a television advertisement,

the disclosure must be made through the same means through which the representation is presented;

2. a visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood;
3. an audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it;
4. in any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable;
5. the disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears;
6. the disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications;
7. the disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication; and
8. when the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. “Commission” means the Federal Trade Commission.

C. “Covered Information” means information from or about an individual consumer, including, but not limited to: (1) first and last name; (2) a home or other physical address, including

street name and name of city or town; (3) an e-mail address or other online contact information, such as an instant messaging user identifier or a screen name; (4) a telephone number; (5) a Social Security number; (6) a driver's license or other government-issued identification number; (7) a financial institution account number; (8) credit or debit card information; (9) precise geolocation data of an individual or mobile device, including but not limited to GPS-based, Wi-Fi-based, or cell-based location information; and (10) an authentication credential, such as a username and password.

D. "Defendants" means Expand, Inc., also d/b/a Gigats, also d/b/a Education Match, also d/b/a SoftRock, Inc. ("Corporate Defendant") and Ayman A. Difrawi, a/k/a Alec Difrawi, a/k/a Ayman El-Difrawi ("Individual Defendant"), individually, collectively, or in any combination.

E. "Sensitive Personal Information" means any of the following about a consumer: (1) Social Security number; (2) financial institution account number; (3) credit or debit card information; and (4) any other information by which a consumer's financial account can be accessed, or by which a consumer might be charged for goods or services, including through third parties such as telecommunications carriers.

F. "Third-Party Lead Generation" means (1) using marketing techniques to identify or attract prospective customers' interest in a third party's product or service; (2) obtaining Covered Information of prospective customers for the third party's product or service; and (3) providing any such Covered Information of prospective customers to the third party.

II. PROHIBITION AGAINST MISREPRESENTATIONS

Defendants, as well as their directors, officers, agents, employees, representatives, successors, assigns, attorneys, and any and all persons in active concert or participation with any

of the aforementioned, who have received actual notice of this Permanent Injunction by personal service or otherwise, whether acting directly or indirectly, in connection with third-party lead generation, the use of any company's name or logo, or advertising, marketing, or promoting employment opportunities are permanently restrained and enjoined from misrepresenting, expressly or by implication, the following facts or information:

1. Whether consumers have applied or are applying to an employment opportunity through Defendants' services;
2. whether Defendants represent prospective employers;
3. whether Defendants or their employees or representatives are independent or paid;
4. the purpose for which Defendants are collecting Covered Information;
5. the relationship Defendants have with prospective employers, educational institutions, or other third parties;
6. whether Defendants find the best educational opportunities for consumers;
7. whether using Defendants' services is a necessary step to apply for an employment opportunity;
8. the necessity of consumers obtaining additional education in order to qualify for employment;
9. any aspect of the performance, benefits, or characteristics of a product or service;
10. whether Defendants' services are guaranteed;
11. the quality of educational opportunities marketed by Defendants; and
12. the salary or other benefits offered by an employment opportunity.

III. PROHIBITION AGAINST PROMOTING OR ADVERTISING EMPLOYMENT OPPORTUNITIES WITHOUT A REASONABLE BASIS

Defendants, as well as their directors, officers, agents, employees, representatives, successors, assigns, attorneys, and any and all persons in active concert or participation with any of the aforementioned, who have received actual notice of this Permanent Injunction by personal service or otherwise, whether acting directly or indirectly, in connection with third-party lead generation, the use of any company's name or logo, or advertising, marketing, or promoting employment opportunities are permanently restrained and enjoined from promoting or advertising that an employment opportunity is currently open or available unless Defendants have a reasonable basis to expect that the employment opportunity is one for which the prospective employer is currently hiring.

IV. PROHIBITION AGAINST TRANSFERRING SENSITIVE PERSONAL INFORMATION

Defendants, as well as their directors, officers, agents, employees, representatives, successors, assigns, attorneys, and any and all persons in active concert or participation with any of the aforementioned, who have received actual notice of this Permanent Injunction by personal service or otherwise, whether acting directly or indirectly, in connection with third-party lead generation or advertising, marketing, or promoting employment opportunities are permanently restrained and enjoined from transferring Sensitive Personal Information, whether directly or through an intermediary, to a third party unless the individual consumer whose information is being transferred has provided express informed consent.

V. PROHIBITION AGAINST TRANSFERRING COVERED INFORMATION

Defendants, as well as their directors, officers, agents, employees, representatives, successors, assigns, attorneys, and any and all persons in active concert or participation with any of the aforementioned, who have received actual notice of this Permanent Injunction by personal service or otherwise, whether acting directly or indirectly, in connection with third-party lead

generation or advertising, marketing, or promoting employment opportunities are permanently restrained and enjoined from transferring Covered Information, whether directly or through an intermediary, to a third party unless Defendants have clearly and conspicuously disclosed to the individual consumer whose information is being transferred:

1. That the consumer's information will be transferred to a third party; and
2. Defendants' relationship with the third-party recipient.

VI. MONETARY JUDGMENT AND PARTIAL SUSPENSION

Equitable monetary relief in the amount of \$90,200,000.00 is awarded in favor of the Commission and against Defendants, jointly and severally.

Within seven days of entry of this Permanent Injunction, Defendants are ordered to pay to the Commission \$360,000.00. Such payment must be made by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

Upon such payment, the remainder of the judgment is suspended, subject to the following conditions:

1. The partial suspension the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, which include: (a) the Financial Statement of the Individual Defendant signed on January 11, 2016, including all attachments thereto; and (b) the Financial Statement of the Corporate Defendant signed by Jonathan Gorfine, Chief Financial Officer, on January 5, 2016, including all attachments thereto;
2. the suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission, the Court finds that Defendant failed to disclose any material

asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations;

3. if the suspension of the judgment is lifted, the judgment becomes immediately due and owing as to that Defendant, less any payment previously made pursuant to this Section plus interest computed from the date of entry of this Permanent Injunction;
4. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Permanent Injunction and may not seek the return of any assets;
5. the facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Permanent Injunction, such as a nondischargeability complaint in any bankruptcy case;
6. the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to 11 U.S.C. § 523(a)(2)(A), and this Permanent Injunction will have collateral estoppel effect for such purposes;
7. Defendants acknowledge that their Taxpayer Identification Numbers—i.e., Social Security Numbers or Employer Identification Numbers—which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Permanent Injunction, in accordance with 31 U.S.C. § 7701;
8. all money paid to the Commission pursuant to this Permanent Injunction may be deposited into a fund administered by the Commission or its designee to be used

for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief—including consumer information remedies—as it determines to be reasonably related to Defendants’ practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited to the United States Treasury as disgorgement. Defendants have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VII. DISPOSAL OF COVERED INFORMATION

Defendants, as well as their directors, officers, agents, employees, representatives, successors, assigns, attorneys, and any and all persons in active concert or participation with any of the aforementioned, who have received actual notice of this Permanent Injunction by personal service or otherwise, whether acting directly or indirectly, in connection with third-party lead generation or advertising, marketing, or promoting employment opportunities are permanently restrained and enjoined from disclosing, using, or benefiting from Covered Information that Defendants obtained prior to the entry of this Permanent Injunction.

Additionally, within thirty days from the date of this Permanent Injunction, the above mentioned persons must destroy all such Covered Information in any and all forms in their possession, custody, or control.

Provided, however, that within ten days of entry of this Permanent Injunction, Defendants may notify individual consumers for whom Defendants are providing any employment assistance-

related services that such services will cease unless the individual consumer consents to continuing such services. Defendants are not required to destroy or prohibited from disclosing, using, or benefiting from Covered Information of consumers who, after receiving such notice, affirmatively provide unambiguous assent, to Defendants, to continuing Defendants' employment assistance-related services within thirty days after entry of this Permanent Injunction.

Provided, further, that Covered Information need not be disposed of, and may be disclosed, (1) to the extent requested by a government agency or required by law, regulation, or court order; or (2) if, at the time Defendants obtained the Covered Information, Defendants' practices complied with Sections II–V of this Order.

VIII. NOTICE TO PURCHASERS OF COVERED INFORMATION

Within thirty days of entry of this Permanent Injunction, Defendants must notify all entities that, in the forty-five days prior to this Permanent Injunction, have purchased or received, or have entered into any contract or arrangement with Defendants to purchase or receive, Covered Information from Defendants. Such notification shall be made by first-class mail, postage paid and return receipt requested or by courier service with signature proof of delivery in form set forth in Appendix A to this Permanent Injunction. The notification letter must be printed on Corporate Defendant's letterhead, and Defendants must include with the notification letter a copy of this Order and Permanent Injunction and the Complaint and shall not include any other document or enclosure.

Provided, however, that this Section does not require Defendants to notify entities that have purchased or received, or have entered into any contract or arrangement with Defendants to purchase or receive, Covered Information from Defendants if, at the time Defendants obtained the

Covered Information, Defendants' practices complied with Sections II–V of this Permanent Injunction.

IX. DEFENDANTS' ACKNOWLEDGMENT OF RECEIPT

Within seven days from the date of this Order and Permanent Injunction, each Defendant must submit a written acknowledgment to the Commission, sworn under penalty of perjury, that he or it has received this Order and Permanent Injunction.

For five years after the entry of this Permanent Injunction, each Individual Defendant, for any business that such Defendant is the majority owner of or controls directly or indirectly, either individually or collectively with any other Defendant, and the Corporate Defendant must deliver a copy of this Order and Permanent Injunction to: (1) all principals, officers, directors, and limited liability company members and manages; (2) all employees, agents, and representatives who participate in third-party lead generation or the advertising, marketing, or promoting of employment opportunities; and (3) any business entity resulting from any change in structure as set forth in Section X of this Permanent Injunction. For current personnel, delivery must occur within seven days of the entry of this Order and Permanent Injunction. For all others, delivery must occur before the individual assumes his or her responsibilities.

Defendant must obtain a signed and dated acknowledgment of receipt of this Order and Permanent Injunction from each individual or entity to which any Defendant delivered a copy of this Order and Permanent Injunction within thirty days of such delivery.

X. COMPLIANCE REPORTING

One year after entry of this Permanent Injunction, each Defendant must submit a compliance report to the Commission, sworn under penalty of perjury, which: (1) identifies the primary physical, postal, and e-mail address and telephone number as designated points of contact,

which representatives of the Commission may use to communicate with Defendant; (2) identifies all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, e-mail, and Internet addresses; (3) describes the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (4) describes in detail whether and how Defendant is in compliance with each Section of this Permanent Injunction; and (5) provides a copy of each acknowledgment obtained pursuant to Section IX of this Permanent Injunction, unless previously submitted to the Commission.

Additionally, each Individual Defendant must: (1) identify all telephone numbers and all physical, postal, e-mail and Internet addresses, including all residences; (2) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (3) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

Thereafter, and for fifteen years following the entry of this Permanent Injunction, each Defendant must submit a compliance notice to the Commission, sworn under penalty of perjury, within fourteen days of any change in the following:

1. Any designated point of contact; or
2. the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Permanent Injunction, including creation, merger,

sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Permanent Injunction.

Additionally, each Individual Defendant must report any change in:

1. Name, including aliases or fictitious names, or residential address; or
2. title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within fourteen days of its filing.

Any submission to the Commission required by this Permanent Injunction to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746.

Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Permanent Injunction must be e-mailed to DEbrief@ftc.gov or sent by overnight courier (not the United States Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Expand, Inc.

XI. RECORDKEEPING

For fifteen years after the entry of this Permanent Injunction, each Individual Defendant, for any business that such Defendant is the majority owner of or controls directly or indirectly, either individually or collectively with any other Defendant, and the Corporate Defendant must create and maintain for at least five years the following records:

1. Accounting records showing the revenues from all products or services sold;
2. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's name, addresses, telephone numbers, job title or position, dates of service, and (if applicable) the reason for termination;
3. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
4. all records necessary to demonstrate full compliance with each provision of this Permanent Injunction, including all submissions to the Commission; and
5. a copy of each unique advertisement or other marketing material published or disseminated by Defendants.

XII. COMPLIANCE MONITORING

For the purpose of monitoring Defendants' compliance with this Permanent Injunction and any failure to transfer any assets as required by this Permanent Injunction:

1. Within fourteen days of receipt of a written request from a representative of the Commission, each Defendant must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
2. For matters concerning this Permanent Injunction, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any

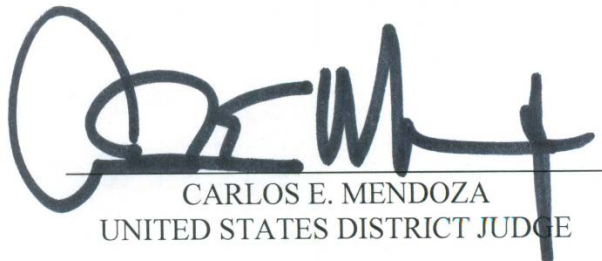
Defendant who has agreed to such an interview. The person interviewed may have counsel present.

3. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Permanent Injunction limits the Commission's lawful use of compulsory process, pursuant to 15 U.S.C. §§ 49, 57b-1.
4. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to 15 U.S.C. §1681b(a)(1).

XIII. RETENTION OF JURISDICTION

This Court retains jurisdiction of this matter for purposes of interpretation, modification, and enforcement of this Permanent Injunction. The Court otherwise declines to retain jurisdiction to enforce any settlement agreement independently negotiated by the Commission and Defendants.

DONE and ORDERED in Orlando, Florida on September 15, 2016.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

APPENDIX A

[Insert date]

Dear Expand Customer,

This letter is to inform you that Expand, Inc. (also d/b/a Gigats, also d/b/a Education Match, also d/b/a SoftRock, Inc.) recently settled a dispute with the Federal Trade Commission regarding Expand's lead generation business. The Federal Trade Commission's Complaint alleged that we violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with generating consumer leads for sale to educational and other institutions.

The settlement permits us to continue generating and selling leads as long as we do so in a manner which does not deceive consumers. The settlement also requires us to request that lead partners like you that purchased or received consumer information from us stop using, sharing, or transferring consumer information received from us between [date] and [date] where you have yet to communicate with the consumer. We are further required to request that partners destroy any such information that is in their possession, custody, or control.

We have attached a copy of the Order and Permanent Injunction entered based on our settlement with the Federal Trade Commission, as well as a copy of the Complaint filed by the Federal Trade Commission.

Sincerely Yours,

[Insert Signature Block]