



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

February 23, 2010

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Mr. Evan Zullo
Division of Financial Practices
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

**RE: Telemarketing Sales Rule - Debt Relief Amendments
Matter No. R411001**

Dear Mr. Zullo:

On October 23, 2009, the State of Minnesota and several other states submitted comments as members of the National Association of Attorneys General regarding the Federal Trade Commission's ("FTC") Proposed Rulemaking to amend the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. The comments concluded by stating: "the Attorneys General of the States . . . will continue to investigate and take enforcement actions against unscrupulous operators in the [debt relief] industry." The Office of the Minnesota Attorney General hereby supplements its earlier comments with information regarding additional actions it has filed against debt relief companies since October 23, 2009.

On February 18, 2010, the Office of the Minnesota Attorney General filed actions against six debt settlement companies who were operating in Minnesota in violation of Minnesota's Debt Settlement Service Provider Act, Minn. Stat. §§ 332B.02, *et seq.* These six debt settlement companies are:

Morgan Drexen, Inc. - Anaheim, California
Debt RX USA, LLC - Dallas, Texas
FH Financial Services, Inc. - Dallas, Texas
State Capital Financial, Inc. - Hallandale Beach, Florida
American Debt Settlement Solutions, Inc. - Boca Raton, Florida
Pathway Financial Management, Inc. - Garden Grove, California

Attached hereto are copies of the six complaints filed against these companies.

On February 18, 2010, the Office of the Minnesota Attorney General also brought an action against One Source, Inc., a debt negotiator located in Chandler, Arizona. That action seeks relief under Minnesota's Consumer Fraud Act, Deceptive Trade Practice Act, and Credit Services Organization Act. A copy of that complaint is also attached.

Mr. Evan Zullo
February 23, 2010
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Please contact me if any additional information is needed.

Sincerely,

JEFFREY E. GRELL
Assistant Attorney General

Enclosures

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

American Debt Settlement Solutions,
Inc.,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against American Debt Settlement Solutions, Inc. ("ADSS"), alleges as follows:

INTRODUCTION

1. In these tough economic times, some Minnesota consumers have turned to debt settlement service providers for assistance. Debt settlement service providers promise to settle a consumer's debt for pennies on the dollar, to stop harassing creditor telephone calls, and to avoid further damage to a consumer's credit score. After paying thousands of dollars to a debt settlement service provider, however, consumers often discover that the debt settlement services are illusory and that the consumer's money has simply gone to pay the debt settlement service provider's fee, leaving the consumer in even worse financial shape. As a result, a 2009 Minnesota law requires debt settlement service providers to be registered with the State and to refrain from certain prohibited practices. The State of Minnesota, by its Attorney General, Lori Swanson, brings this consumer protection lawsuit against ADSS for engaging in debt settlement

services in Minnesota as an unregistered debt settlement service provider and for other violations of the State's debt settlement service provider laws. These violations include but are not limited to: ADSS's failure to submit a bond or other appropriate security running to the State, ADSS's imposition of debt settlement service fees that violate the limitations prescribed by Minnesota law, and ADSS's requirement that consumers resolve any disputes with ADSS through arbitration rather than the court system. Minn. Stat. §§ 332B.04-.14 (2009).

PARTIES

2. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. §§ 8.01, 8.31, 8.32, 332B.13, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law.

3. ADSS is a Florida corporation with its principal place of business at 5499 N. Federal Highway C, Boca Raton, Florida 33487. ADSS also maintains a mailing address at 2901 Clint Moore Road, Suite 200, Boca Raton, Florida 33496.

JURISDICTION

4. This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. §§ 8.01, 8.31, 8.32, subd. 2(a), and 332B.13 (2009).

5. This Court has personal jurisdiction over ADSS because ADSS does business in Minnesota and has committed acts in Minnesota causing injury to Minnesota citizens.

VENUE

6. Venue in Scott County is proper under Minn. Stat. § 542.09 (2009) because the cause of action arose, in part, in Scott County.

BACKGROUND

7. Given the economic issues that many Americans have faced in the past few years, the debt settlement industry has grown, bringing with it more television commercials, robo-calls, and internet pop-up advertisements appealing to those hit hardest by the current financial crisis.

8. When signing an ADDS Client Service Agreement, Minnesota residents purportedly “engage[] ADSS and its appointees [sic] the exclusive right to negotiate with CLIENT’s Enrolled Creditors, and to settle Enrolled Creditors’ claims against CLIENT.” The agreement further states, among other things, that “ADSS will make every effort to achieve the lowest possible settlement for Client” and that “[u]pon verification from CLIENT, of funds availability, ADSS will facilitate negotiation and settlement of CLIENT’S Enrolled Creditor accounts.”

9. In 2009, the Minnesota Legislature passed Minnesota Statutes Chapter 332B. Chapter 332B imposes requirements on debt settlement service providers. In summary, Chapter 332B imposes the following requirements, among others, on debt settlement services providers:

- a. After August 1, 2009, Minn. Stat. § 332B.03 makes it unlawful for a debt settlement service provider to offer, advertise, or execute or cause to be executed any debt settlement services or debt settlement services agreement without first registering with the Minnesota Commissioner of Commerce.
- b. Pursuant to Minn. Stat. § 332B.04, subd. 3, a debt settlement service provider’s registration must also be accompanied by a surety bond, or other authorized security, in a sum to be determined by the commissioner but not less than \$5,000.

- c. A debt settlement service provider must also enter a written debt settlement services agreement that satisfies the requirements of Minn. Stat. § 332B.06, subd. 1 and subd. 5. Minn. Stat. § 332B.06, subd. 6, further sets forth certain provisions that are prohibited from being included in debt settlement service agreements.
- d. Minn. Stat. § 332B.07 sets forth the debtor's right to cancel without cause at any time upon ten days written notice and further delineates the debtor's right to a refund of money paid to the debt settlement service provider.
- e. Before entering the debt settlement services agreement, a debt settlement service provider must make certain disclosures to the consumer as required by Minn. Stat. § 332B.06, subd. 2, and must (among other things) make a determination as to whether the debtor's creditors are reasonably likely to participate in the debt settlement services program, *id.* at § 332B.06, subd. 3.
- f. A debt settlement service provider is also required to give debtors a verbatim notice set forth in Minn. Stat. § 332B.06, subd. 4. This notice informs debtors that their enrollment in a debt settlement service program will not stop creditors from garnishing the debtor's accounts, communicating with the debtor, or suing the debtor. The notice further warns debtors about their continuing liability for the debt settlement service provider's fee and the

threat of income tax liability if a creditor does settle a debt for less than the amount owed.

- g. Minn. Stat. § 332B.09 imposes fee limitations upon debt settlement service providers.
 - h. Minn. Stat. §§ 332B.10-.11 prohibits debt settlement service providers from engaging in certain specified deceptive practices, from misrepresenting the benefits and risks of enrolling in a debt settlement service program, and from making false representations in advertisements.
10. As illustrated by the following debtor's experience, ADSS has engaged in practices that violate Chapter 332B:

C.W.

11. C.W. is 44 years old and lives in Shakopee, Minnesota. She is married with four children and works for a pharmaceutical company.

12.. C.W. was contacted three times by ADSS telemarketers. The first two times, C.W. told ADSS that she wasn't interested in ADSS's services. On the third occasion, however, C.W. agreed to try the ADSS program. C.W. understood that ADSS would help settle her debt for less than the amount she owed. C.W. further understood that she should stop paying her creditors and that she would ultimately save about \$5,000. C.W. believed that she would deposit money into an account, and ADSS would pay off her creditors.

13. On or about October 6, 2009, C.W. received various documents relating to the ADSS debt settlement program via the internet. C.W. electronically verified the documents and returned them to ADSS via the internet. According to the ADSS documents, C.W. enrolled debt

in the amount of \$17,595 into the plan. ADSS represented that C.W. would pay \$328.42 over a three year period and that it could settle her debt for \$11,801.12, including its fee. Under the plan, C.W.'s first four monthly payments would go to pay ADSS's fees (with \$263.92 going to its administrative fee and \$59.00 going to its maintenance fee). For months 5 through 15, ADSS's administrative fee would consume \$143.96 of her payment, she would pay an additional \$59.00 for ADSS's maintenance fee, and the remaining \$125.46 would be deposited into her savings/settlement account. For months 16 through 36, C.W. would not pay any administrative fee, she would pay ADSS's \$59.00 maintenance fee, and the remaining \$269.42 would be deposited into her savings/settlement account. ADSS projected that C.W. would save \$5,793.88 under its debt settlement plan.

14. C.W. thought ADSS would pay her creditors right away, but C.W. eventually came to understand that ADSS was not going to pay any of her creditors for three or four years. C.W. also received a letter in the mail from a lawyer who represented Sam's Club. The lawyer stated that ADSS was not complying with Minnesota law and that Sam Club was taking me to court.

15. C.W. talked to her other creditors, and the other creditors said that they had not received any information from ADSS. C.W. called ADSS. ADSS said that there was nothing it could do to help C.W. until action was taken against her.

16. C.W. stopped any further payments from her bank to ADSS on December 23, 2009. According to her records, C.W. paid ADSS \$645.84 and does not believe she got anything in return. As of the date of this action, C.W. has not received a refund from ADSS despite repeated requests. C.W. filed a complaint with the Minnesota Attorney General's Office on December 30, 2009.

COUNT I
DEBT SETTLEMENT SERVICES ACT

17. Plaintiff re-alleges all prior paragraphs of this Complaint.

18. Minn. Stat. § 332B.03 (2009), provides:

On or after August 1, 2009, it is unlawful for any person, whether or not located in this state, to operate as a debt settlement services provider or provide debt settlement services including, but not limited to, offering, advertising, or executing or causing to be executed any debt settlement services or debt settlement services agreement, except as authorized by law, without first becoming registered as provided in this chapter.

19. ADSS is a “debt settlement services provider” within the meaning of Minn. Stat. § 332B.02, subds. 10 and 13 (2009). Since August 1, 2009, ADSS has offered to provide advice, or offered to act “as an intermediary between a debtor and one or more of the debtor's creditors, where the primary purpose of the advice or action is to obtain a settlement for less than the full amount of debt, whether in principal, interest, fees, or other charges, incurred primarily for personal, family, or household purposes including, but not limited to, offering debt negotiation, debt reduction, or debt relief services.” ADSS has also advised, encouraged, assisted, or counseled debtors to accumulate funds in an account for future payment to of a reduced amount of debt to one or more of the debtor’s creditors. ADSS has offered or provided its debt settlement services to debtors domiciled in the State of Minnesota.

20. As a debt settlement services provider, ADSS has engaged in multiple, separate violations of Minn. Stat., Chapter 332B, including but not limited to the following violations:

- a. ADSS has offered, advertised, or executed or caused to be executed debt settlement services or debt settlement services agreements without first becoming registered with the Minnesota

Commissioner of Commerce in violation of Minn. Stat. § 332B.03 (2009).

- b. ADSS's debt settlement services agreement does not comply with the requirements of Minn. Stat. § 332B.06, subd. 1, in that ADSS's agreement does not "conspicuously indicate whether or not the debt settlement services provider is registered with the Minnesota Department of Commerce" and does not include its registration number.
- c. ADSS has failed to disclose both orally and in writing whether or not it is registered with the Minnesota Department of Commerce and has further failed to provide its registration number(s) in violation of Minn. Stat. § 332B.06, subd. 4.
- d. ADSS has violated Minn. Stat. § 332B.04, subd. 3, by failing to submit a surety bond, or other appropriate security, running to the state of Minnesota for the use of the state.
- e. Prior to entering a debt settlement services agreement with a Minnesota resident, ADSS does not prepare in writing and provide to the debtor an individualized financial analysis, as required by Minn. Stat. § 332B.06, subd. 2, reflecting ADSS's determination that:
 - i. the debt settlement plan proposed for addressing the debt is suitable for the individual debtor;
 - ii. the debtor can reasonably meet the requirements of the proposed debt settlement services plan; and

- iii. based on the totality of the circumstances, there is a net tangible benefit to the debtor of entering into the proposed debt settlement services plan.

In fact, ADSS's Client / Creditor Relationship Statement states:

"The CLIENT further represents ADSS has not provided the CLIENT with any advice or recommendation regarding the advisability of reducing or terminating payments to client creditors."

- f. Before executing a debt settlement services agreement or providing any services, ADSS has failed to "make a determination, supported by sufficient bases, [as to] which creditors listed by the debtor are reasonably likely, and which are not reasonably likely, to participate in the debt settlement services plan set forth in the debt settlement services agreement," as required by Minn. Stat. § 332B.06, subd. 3. If not all creditors listed in the debt settlement services agreement are reasonably likely to participate in the debt settlement services plan, ADSS has further failed to obtain written authorization from the debtor to proceed with the debt settlement services agreement without the likely participation of all listed creditors.
- g. ADSS has failed to provide debtors the verbatim notice specified in Minn. Stat. § 332B.06, subd. 4. The statutorily mandated notice explains (among other things) that: a debtor's wages or bank accounts may be garnished; creditors may continue to contact the

debtor or may sue the debtor; fees, interest and other charges will continue to accrue during the term of the debt settlement program; taxes may be owed on any unpaid amount of debt that is settled by a creditor; and a debtor's credit rating may be adversely affected by participating in the program.

- h. ADSS's debt services agreement fails to set forth the total amount and an itemization of fees, including any origination fees, monthly fees, and settlement fees reasonably anticipated to be paid by the debtor over the term of the agreement in the manner specified by Minn. Stat. § 332B.06, subd. 5.
- i. ADSS's debt settlement service agreement with Minnesota residents contains provisions expressly prohibited by Minn. Stat. § 332B.06, subd. 6, including (but not limited to): a mandatory arbitration clause; and a choice of law provision stating that the agreement is to be construed in accordance with the laws of Florida.
- j. ADSS fails to provide debtors with the cancellation rights set forth in Minn. Stat. § 332B.07 and its debt settlement service agreement does not contain a prominent statement describing the debtor's cancellation rights as required by Minn. Stat. § 332B.06, subd. 5(1).

- k. ADSS has charged fees that violate the limitations set forth in Minn. Stat. § 332B.09, subd. 2. For example, C.W.'s fee was based upon the total amount of her enrolled debt:
- i. Section 332B.09, subd. 2(a), prohibits non-refundable, origination fees in excess of \$200 on aggregate debt of less than \$20,000; C.W.'s service agreement called for an enrollment fee totaling \$1,055.68, which (when combined with ADSS's monthly maintenance fee) consumed the entirety of her first four monthly payments; under ADSS's agreement, any fees received from C.W. were non-refundable;
 - ii. Section 332B.09, subd. 2(a), prohibits monthly fees in excess of \$50 per month on aggregate debt of less than \$40,000; under ADSS's agreement called for monthly fees of \$322.92 for months 1 through 4; monthly fees of \$202.96 for months 5 through 15; and monthly fees of \$59.00 for months 16 through 36;
 - iii. Section 332.09, subd. 2, prohibits ADSS from claiming, demanding, charging, collecting, or receiving a fee in excess of 15 percent of the aggregate debt; ADSS claimed, demanded, or charged C.W. fees that totaled \$4,763.25 (27 percent) on her aggregate debt of \$17,595; under Minnesota law, ADSS could not lawfully charge fees exceeding \$2,639.25;
 - iv. Section 332.09, subd. 2(c) prohibits ADSS from claiming, demanding, charging, collecting, or receiving more than 40 percent of the total amount of fees allowable before delivery to ADSS by a creditor of a bona fide written settlement offer consistent with the terms of the debt settlement services agreement; ADSS total allowable fees on aggregate debt of \$17,595 were \$2639.25; ADSS was permitted to claim, demand, or charge C.W. only \$1,055.70 before receiving a bona fide written settlement offer from a creditor; ADSS claimed, demanded, or charged C.W. fees that totaled \$4,763.25 before receiving a bona fide written settlement offer from a creditor;
 - v. ADSS claims, demands, charges, and assesses fees against debtors that are in excess of those permitted under Minn.

Stat. § 332B.09, in violation of Minn. Stat. 332B.09, subd. 4.

1. ADSS has advised debtors to stop paying creditors in violation of Minn. Stat. § 332B.10(1) and Minn. Stat. § 332A.14(3).

21. Pursuant to Minn. Stat. §§ 8.31, 332B.13, subd. 5, and other authority, the Attorney General is entitled to injunctive relief, restitution, civil penalties, costs, attorneys' fees, and other equitable relief by reason of ADSS's violations of Minn. Stat. §§ 332B.02 - 332B.14.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against ADSS as follows:

1. Declaring that ADSS's acts described in this Complaint constitute multiple, separate violations of Minn. Stat., Chapter 332B;
2. Enjoining ADSS and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from engaging in conduct in violation of Minn. Stat., Chapter 332B;
3. Rescinding any debt settlement services agreement entered by ADSS with any Minnesota resident since August 1, 2009, pursuant to Minn. Stat. § 332B.12;
4. Awarding judgment against ADSS, jointly and severally, for restitution under the *parens patriae* doctrine, the general equitable powers of this Court, Minn. Stat. § 8.31, Minn. Stat. § 332B.12, and other authority, for all persons injured by ADSS's acts described in this Complaint;
5. Awarding judgment against ADSS for civil penalties pursuant to Minn. Stat. §§ 8.31, subd. 3, for each separate violation of Minn. Stat., Chapter 332B;

6. Awarding Plaintiff its costs, including costs of investigation and attorneys fees, as authorized by Minn. Stat. § 8.31, subd. 3a; and

7. Granting such further relief as provided by law and/or as the Court deems appropriate and just.

Dated: February 18, 2010

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

JEFFREY E. GRELL
Assistant Attorney General
Atty. Reg. No. 021078X

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St. Paul, Minnesota 55101-2131
(651) 757-1207 (Voice)
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ATTORNEYS FOR PLAINTIFF
STATE OF MINNESOTA

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2008).

JEFFREY E. GRELL

STATE OF MINNESOTA **FILED PSL** DISTRICT COURT
COUNTY OF HENNEPIN **2010 FEB 18 AM 8:35** FOURTH JUDICIAL DISTRICT

DEPOSITION OF WITH DISCOVERY SET BY **DEPUTY**
HENNECO DISTRICT COURT ADMINISTRATOR Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Lori Swanson, Court File No. _____

Plaintiff, PARTIX

COMPLAINT

vs. **Debt Rx USA, LLC**

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against Debt Rx USA, LLC ("DRU"), alleges as follows:

INTRODUCTION

1. In these tough economic times, some Minnesota consumers have turned to debt settlement service providers for assistance. Debt settlement service providers promise to settle a consumer's debt for pennies on the dollar, to stop harassing creditor telephone calls, and to avoid further damage to a consumer's credit score. After paying thousands of dollars to a debt settlement service provider, however, consumers often discover that the debt settlement services are illusory and that the consumer's money has simply gone to pay the debt settlement service provider's fee, leaving the consumer in even worse financial shape. As a result, a 2009 Minnesota law requires debt settlement service providers to be registered with the State and to refrain from certain prohibited practices. The State of Minnesota, by its Attorney General, Lori Swanson, brings this consumer protection lawsuit against DRU for engaging in debt settlement services in Minnesota as an unregistered debt settlement service provider and for other violations

of the State's debt settlement service provider laws. These violations include but are not limited to: DRU's failure to submit a bond or other appropriate security running to the State, DRU's imposition of debt settlement service fees that violate the limitations prescribed by Minnesota law, and DRU's requirement that consumers resolve any disputes with DRU through arbitration rather than the court system. Minn. Stat. §§ 332B.04-.14 (2009).

PARTIES

2. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. §§ 8.01, 8.31, 8.32, 332B.13, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota law.

3. DRU is a foreign limited liability company doing business at 5501 LBJ Freeway, Suite 100, Dallas, Texas 75240.

JURISDICTION

4. This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. §§ 8.01, 8.31, 8.32, subd. 2(a), 332.13 (2009).

5. This Court has personal jurisdiction over DRU because DRU does business in Minnesota and has committed acts in Minnesota causing injury to Minnesota consumers.

VENUE

6. Venue in Hennepin County is proper under Minn. Stat. § 542.09 (2009) because the cause of action arose, in part, in Hennepin County.

BACKGROUND

7. Given the economic issues that many Americans have faced in the past few years, the debt settlement industry has grown, bringing with it more television commercials, robo-calls, and internet pop-up advertisements appealing to those hit hardest by the current financial crisis.

8. DRU purports to offer debt settlement services to Minnesota residents. DRU's Client Service Agreement states its purpose is "for the resolution of outstanding debt through negotiation and settlement with the creditors." The agreement further states:

Client has engaged [DRU] . . . for the sole purpose of negotiating a resolution of said creditors within the agreement, client further intends, by this agreement, to create a confidential relationship with [DRU] In [sic] regard to resolving any outstanding creditor claims, suits, or judgments.

9. In 2009, the Minnesota Legislature passed Minnesota Statutes, Chapter 332B. In summary, Chapter 332B imposes the following requirements, among others, on debt settlement service providers:

- a. After August 1, 2009, Minn. Stat. § 332B.03 makes it unlawful for a debt settlement service provider to offer, advertise, or execute or cause to be executed any debt settlement services or debt settlement services agreement without first registering with the Minnesota Commissioner of Commerce.
- b. Pursuant to Minn. Stat. § 332B.04, subd. 3, a debt settlement service provider's registration must also be accompanied by a surety bond, or other authorized security, in a sum to be determined by the commissioner but not less than \$5,000.
- c. Debt settlement service providers must also enter a written debt settlement services agreement that satisfies the requirements of

Minn. Stat. § 332B.06, subd. 1 and subd. 5. Minn. Stat. § 332B.06, subd. 6, further sets forth certain provisions that are prohibited from being included in debt settlement service agreements.

- d. Minn. Stat. § 332B.07 sets forth the debtor's right to cancel without cause at any time upon ten days written notice and further delineates the debtor's right to a refund of money paid to the debt settlement service provider.
- e. Before entering the debt settlement services agreement, the debt settlement service provider must make certain disclosures to the consumer as required by Minn. Stat. § 332B.06, subd. 2, and must (among other things) make a determination as to whether the debtor's creditors are reasonably likely to participate in the debt settlement services program, *id.* at § 332B.06, subd. 3.
- f. Debt settlement service providers are also required to give debtors a verbatim notice set forth in Minn. Stat. § 332B.06, subd. 4. This notice informs debtors that their enrollment in a debt settlement service program will not stop creditors from garnishing the debtor's accounts, communicating with the debtor, or suing the debtor. The notice further warns debtors about their continuing liability for the debt settlement service provider's fee and the threat of income tax liability if a creditor does settle a debt for less than the amount owed.

- g. Minn. Stat. § 332B.09 imposes fee limitations upon debt settlement service providers.
- h. Minn. Stat. §§ 332B.10-11 prohibits debt settlement service providers from engaging in certain specified deceptive practices, from misrepresenting the benefits and risks of enrolling in a debt settlement service program, and from making false representations in advertisements.

10. As illustrated by the following debtor's experience, DRU has engaged in practices that violate Chapter 332B:

D.B.

11. D.B. is 49 years old and lives in Minneapolis, Minnesota. She is a teacher in the St. Paul public school system. D.B. was telephoned by DRU shortly after she provided her personal information to an internet website regarding debt relief. D.B. discussed both debt management and debt settlement programs with DRU.

12. After speaking with the DRU representative about the debt settlement option, D.B. had the following understanding: D.B. would have to stop paying her creditors immediately; the debt settlement program would not work unless she missed payments for 2-3 months; D.B. was supposed to make payments to DRU, rather than her creditors; DRU would contact her creditors and let them know that she was working with DRU; D.B.'s first three monthly payments would go to pay DRU's fees; after three months, DRU would start paying D.B.'s creditors; the debt settlement program would last for four years; and DRU would be in contact with her throughout the program.

13. D.B. could not afford the monthly payments under the debt management program, so on or about August 4, 2009, D.B. enrolled in DRU's debt settlement program.

14. According to the debt settlement program documents prepared by DRU, D.B. enrolled total unsecured debt in the amount of \$43,158. D.B.'s total service fee to DRU was to be \$6,473.70. Her estimated monthly payments were \$494.52. According to her agreement with DRU, D.B.'s initial four monthly payments (totaling \$1,978.08) were to go toward payment of DRU's fee. After the initial four months, \$224.78 of her next 20 monthly payments would go to DRU's service fee with the remainder going into her settlement account. It is D.B.'s understanding that the remaining 24 monthly payments would wholly be deposited in her settlement account. DRU estimated that it could settle D.B.'s debt for \$17,263.20.

15. After D.B.'s accounts fell delinquent and her creditors started calling, D.B. began having doubts about DRU's program. Moreover, DRU was no longer contacting D.B. When she called DRU, she was left with the understanding that it could not do anything for her until she missed three months of payments. D.B. called DRU many times but was unable to even leave a voice-mail. She tried emailing DRU, but DRU did not respond.

16. After making three payments to DRU, D.B. canceled her enrollment and requested a refund on November 11, 2009. D.B. also verbally canceled her enrollment and made refund requests during telephone calls with DRU. With regard to her refund request, the DRU representatives said that they would have to talk to accounting.

17. D.B. has not yet received a refund from DRU. DRU claims that the money is compensation for the work it has done on D.B.'s account but refuses to provide D.B. with an explanation of the work it did on her behalf.

18. On or about December 16, 2009, D.B. filed a complaint with the Minnesota Attorney General's Office.

COUNT I
DEBT SETTLEMENT SERVICES ACT

19. Plaintiff re-alleges all prior paragraphs of this Complaint.

20. Minn. Stat. § 332B.03 (2009), provides:

On or after August 1, 2009, it is unlawful for any person, whether or not located in this state, to operate as a debt settlement services provider or provide debt settlement services including, but not limited to, offering, advertising, or executing or causing to be executed any debt settlement services or debt settlement services agreement, except as authorized by law, without first becoming registered as provided in this chapter.

21. DRU is a "debt settlement services provider" within the meaning of Minn. Stat. § 332B.02, subds. 10 and 13 (2009). Since August 1, 2009, DRU has offered to provide advice, or offered to act "as an intermediary between a debtor and one or more of the debtor's creditors, where the primary purpose of the advice or action is to obtain a settlement for less than the full amount of debt, whether in principal, interest, fees, or other charges, incurred primarily for personal, family, or household purposes including, but not limited to, offering debt negotiation, debt reduction, or debt relief services." DRU has also advised, encouraged, assisted, or counseled debtors to accumulate funds in an account for future payment to of a reduced amount of debt to one or more of the debtor's creditors. DRU has offered or provided its debt settlement services to debtors domiciled in the State of Minnesota.

22. As a debt settlement services provider, DRU has engaged in multiple, separate violations of Minn. Stat., Chapter 332B, including but not limited to the following violations:

- a. DRU has offered, advertised, or executed or caused to be executed
debt settlement services or debt settlement services agreements

without first becoming registered with the Minnesota Commissioner of Commerce in violation of Minn. Stat. § 332B.03 (2009).

- b. DRU has failed to disclose both orally and in writing whether or not it is registered with the Minnesota Department of Commerce and its registration number in violation of Minn. Stat. § 332B.06, subd. 4.
- c. DRU has violated Minn. Stat. § 332B.04, subd. 3 (2009) by failing to submit a surety bond, or other appropriate security, running to the state of Minnesota for the use of the state.
- d. DRU's debt settlement services agreement does not comply with the requirements of Minn. Stat. § 332B.06, subd. 1, in that DRU's agreement does not "conspicuously indicate whether or not the debt settlement services provider is registered with the Minnesota Department of Commerce" and does not include its registration number.
- e. Prior to entering a debt settlement services agreement with a Minnesota resident, DRU does not prepare in writing and provide to the debtor an individualized financial analysis, as required by Minn. Stat. § 332B.06, subd. 2, reflecting its determination that:
 - i. the debt settlement plan proposed for addressing the debt is suitable for the individual debtor;
 - ii. the debtor can reasonably meet the requirements of the proposed debt settlement services plan; and

- iii. based on the totality of the circumstances, there is a net tangible benefit to the debtor of entering into the proposed debt settlement services plan.

In fact, DRU's client service agreement states: "The client further represents [DRU] has not provided client with any advice or recommendation regarding the advisability of reducing or terminating payments to clients creditors."

- f. Before executing a debt settlement services agreement or providing any services, DRU has failed to "make a determination, supported by sufficient bases, which creditors listed by the debtor are reasonably likely, and which are not reasonably likely, to participate in the debt settlement services plan set forth in the debt settlement services agreement," as required by Minn. Stat. § 332B.06, subd. 3. If not all creditors listed in the debt settlement services agreement are reasonably likely to participate in the debt settlement services plan, DRU has further failed to obtain written authorization from the debtor to proceed with the debt settlement services agreement without the likely participation of all listed creditors.
- g. DRU has failed to provide debtors the verbatim notice specified in Minn. Stat. § 332B.06, subd. 4. The statutorily mandated notice explains (among other things) that: a debtor's wages or bank accounts may be garnished; creditors may continue to contact the debtor or may sue the debtor; fees, interest and other charges will

continue to accrue during the term of the debt settlement program; taxes may be owed on any unpaid amount of debt that is settled by a creditor; and a debtor's credit rating may be adversely affected by participating in the program.

- h. The front page of DRU's debt settlement service agreement fails to set forth the total amount and an itemization of fees, including any origination fees, monthly fees, and settlement fees reasonably anticipated to be paid by the debtor over the term of the agreement in the manner specified by Minn. Stat. § 332B.06, subd. 5.
- i. DRU has failed to provide debtors with the ten day right to cancel set forth in Minn. Stat. § 332B.07 and its debt settlement service agreement does not contain a prominent statement describing the debtor's cancelation rights as required by Minn. Stat. § 332B.06, subd. 5(1). To the contrary, DRU's debt settlement service agreement provides only a three day cancelation period and imposes other obligations on cancelling consumers that are not authorized under Minnesota law.
- j. DRU's debt settlement service agreement contains provisions expressly prohibited by Minn. Stat. § 332B.06, subd. 6, including (but not limited to): a mandatory arbitration clause requiring arbitration to occur in Dallas, Texas; and a choice of law provision stating that the agreement is to be construed in accordance with the laws of Texas, rather than Minnesota.

- k. DRU charges fees that violate the limitations set forth in Minn. Stat. § 332B.09, subd. 2. In particular, DRU's fees are based upon the total amount of debt enrolled by the debtor, as such:
- i. Section 332B.09, subd. 2(a)(1), prohibits non-refundable, origination fees in excess of \$400 on aggregate debt of more than \$20,000; DRU has failed to refund D.B.'s first four monthly payments totaling \$1,978.08;
 - ii. Section 332B.09, subd. 2(a)(2), prohibits monthly fees in excess of \$60 per month on aggregate debt of more than \$40,000; DRU's service agreement with M.S. called for monthly fees of \$494.52 for months 1 through 4 and for monthly fees of \$224.78 for months 5 through 20;
 - iii. DRU claimed, demanded, or charged more than 40 percent of the total amount of fees allowable from M.S. before it received a bona fide written settlement offer from M.S.'s creditors in violation of Minn. Stat. § 332B.09, subd. 2(c); and
 - iv. DRU claims, demands, charges, and assesses fees against debtors that are in excess of those permitted under Minn. Stat. § 332B.09, in violation of Minn. Stat. 332B.09, subd. 4.
- l. DRU has violated Minn. Stat. §§ 332B.10(1) and 332A.14(3) by advising, counseling, or encouraging a debtor to stop paying a creditor, or by implying, inferring, encouraging, or in any other way indicating, that it is advisable to stop paying a creditor.

23. Pursuant to Minn. Stat. §§ 8.31, 332B.13, subd. 5, and other authority, the Attorney General is entitled to injunctive relief, restitution, civil penalties, costs, attorneys' fees, and other equitable relief by reason of DRU's violations of Minn. Stat. §§ 332B.02 - 332B.14.

RELIEF

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against DRU as follows:

1. Declaring that DRU's acts described in this Complaint constitute multiple, separate violations of Minn. Stat., Chapter 332B;

2. Enjoining DRU and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert or participation with it, from engaging in conduct in violation of Minn. Stat., Chapter 332B;

3. Rescinding any debt settlement services agreement entered by DRU with any Minnesota resident since August 1, 2009, pursuant to Minn. Stat. § 332B.12;

4. Awarding judgment against DRU for restitution under the *parens patriae* doctrine, the general equitable powers of this Court, Minn. Stat. § 8.31, Minn. Stat. § 332B.12, and other authority, for all persons injured by DRU's acts described in this Complaint;

5. Awarding judgment against DRU for civil penalties pursuant to Minn. Stat. §§ 8.31, subd. 3, for each separate violation of Minn. Stat., Chapter 332B;

6. Awarding Plaintiff its costs, including costs of investigation and attorneys fees, as authorized by Minn. Stat. § 8.31, subd. 3a; and

7. Granting such further relief as provided by law and/or as the Court deems appropriate and just.

Dated: February 19, 2010

LORI SWANSON
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ATTORNEYS FOR PLAINTIFF
STATE OF MINNESOTA

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2008).

JEFFREY E. GRELL

AG: #2581437-v1