

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

Case Type: Other Civil  
(Consumer Protection)

State of Minnesota by its Attorney General,  
Lori Swanson,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

## COMPLAINT

FH Financial Service, Inc.,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against FH Financial Service, Inc. ("FH Financial"), 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 FH Financial 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: FH Financial's failure to submit a bond or other appropriate security running to the State, FH Financial's imposition of debt settlement service fees that violate the limitations prescribed by Minnesota law, and FH Financial's requirement that consumers resolve any disputes with FH Financial 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. FH Financial is a foreign corporation doing business at 8111 LBJ Freeway, Suite 1150, 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 FH Financial because FH Financial does business in Minnesota and has committed acts in Minnesota causing injury to Minnesota consumers.

### **VENUE**

6. Venue in St. Louis County is proper under Minn. Stat. § 542.09 (2009) because the cause of action arose, in part, in St. Louis 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. FH Financial purports to offer debt settlement services to Minnesota residents. FH Financial's standard Debt Settlement Service Agreement states its purpose is "to attempt to reduce the outstanding balance owed to any and all of Clients [sic] creditors." The agreement further states:

[FH Financial] will arrange a settlement with Client's creditor or Creditor's Agent, upon Client's acceptance of a Settlement Offer. Client will pay the settlement through their personal saving account.

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, FH Financial has engaged in practices that violate Chapter 332B:

11. M.S. is a 27 year old resident of Eveleth, Minnesota. In September of 2009, she was struggling to manage her credit card debt after losing her job and was looking for a company to assist her. M.S. contacted FH Financial by clicking on an internet advertisement. Within minutes, M.S. was contacted by an FH Financial representative. After speaking to the FH Financial representative, M.S. had the impression that FH Financial was her only salvation from debt.

12. It was M.S.'s understanding that FH Financial would take care of contacting all of M.S.'s creditors and would stop the harassing telephone calls from her creditors. M.S. also understood that FH Financial would keep in contact with her about the progress of her debt settlement program and would update her on what was being done on her behalf. The FH Financial representative also said that it charged an upfront fee for its services and that M.S.'s first four payments would be kept as FH Financial's fee.

13. On September 11, 2009, FH Financial e-mailed a debt settlement program proposal to M.S. According to the plan, M.S. enrolled \$12,200.98 in total debt. The plan called for M.S. to make monthly payments to FH Financial for 36 months. FH Financial's fee was \$1,830.15, which is equivalent to 15% of the total debt enrolled. For the first four months, M.S.'s monthly payments of \$183.02 would entirely be credited to FH Financial's consulting fee (\$738.08), which its service agreement describes as "non-refundable." For months five through sixteen, \$91.51 of M.S.'s monthly payments of \$186.83 would be credited to FH Financial's fee and the remainder would be credited to M.S.'s settlement account. For months seventeen through thirty-six, M.S.'s monthly payments of \$186.83 would be credited to her settlement account. On September 11, 2009, FH Financial Services took its first monthly payment via automatic transfer from M.S.'s checking account.

14. Despite the numerous promises by FH Financial to stop the creditor calls, M.S.'s creditors continued to call. When she contacted the telephone number provided to her by FH Financial, she was told that it was the wrong telephone number. After calling her creditors, M.S. discovered that the creditors had not been told that she was enrolled in an FH Financial debt settlement program.

15. In October of 2009, M.S. canceled her contract with FH Financial and demanded a refund of her money. After the Attorney General intervened on her behalf, FH Financial credited M.S.'s account with \$185.13.

**COUNT I**  
**DEBT SETTLEMENT SERVICES ACT**

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

17. 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.

18. FH Financial is a “debt settlement services provider” within the meaning of Minn. Stat. § 332B.02, subds. 10 and 13 (2009). Since August 1, 2009, FH Financial 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.” FH Financial has offered or provided its debt settlement services to debtors domiciled in the State of Minnesota.

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

- a. FH Financial 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. FH Financial 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. FH Financial 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. FH Financial's debt settlement services agreement does not comply with the requirements of Minn. Stat. § 332B.06 in that FH Financial'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, FH Financial 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, FH Financial's standard disclosures state: "we do NOT evaluate your unique credit and debt situation to determine the best debt relief option for you. It is your responsibility and choice to evaluate and determine which option is best for you."



- f. Before executing a debt settlement services agreement or providing any services, FH Financial 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, FH Financial 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. FH Financial fails 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 FH Financial’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. FH Financial fails 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 cancellation rights as required by Minn. Stat. § 332B.06, subd. 5(1). To the contrary, FH Financial's debt settlement service agreement provides only a three day cancellation period.
- j. FH Financial'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. FH Financial charges fees that violate the limitations set forth in Minn. Stat. § 332B.09, subd. 2. In particular, FH Financial'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 \$200 on aggregate debt of less than \$20,000; FH Financial's service agreement with M.S.

called for a non-refundable origination fee of \$732.08 on aggregate debt of only \$12,200.98;

- ii. Section 332B.09, subd. 2(a)(2), prohibits monthly fees in excess of \$50 per month on aggregate debt of less than \$40,000; FH Financial's service agreement with M.S. called for monthly fees of \$183.02 for months 1 through 4 and for monthly fees of \$91.51 for months 5 through 16;
  - iii. FH Financial 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. FH Financial 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. FH Financial violates Minn. Stat. § 332B.10(3)(iii) by implying, inferring, or representing that creditors will not continue to contact the debtor.

20. 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 FH Financial'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 FH Financial as follows:

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

2. Enjoining FH Financial 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 FH Financial with any Minnesota resident since August 1, 2009, pursuant to Minn. Stat. § 332B.12;

4. Awarding judgment against FH Financial 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 FH Financial's acts described in this Complaint;

5. Awarding judgment against FH Financial 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

LORI SWANSON  
Attorney General  
State of Minnesota

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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: #2569491-v1

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

BY DEPUTY  
HENN. CO. DISTRICT  
COURT ADMINISTRATOR  
Case Type: Other Civil  
(Consumer Protection)  
State of Minnesota by its Attorney General,  
Lori Swanson, vs. MDI through a number of other than the State of Minnesota  
Court File No. \_\_\_\_\_

Plaintiff,

## COMPLAINT

vs.

Morgan Drexen, Inc.,

Defendants.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against Morgan Drexen, Inc. ("MDI"), 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 persons to whom debt settlement services are delegated 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 MDI for engaging in debt settlement services in Minnesota as an unregistered person to whom debt

settlement services are delegated and for other violations of the State's debt settlement service provider laws. These violations include but are not limited to: MDI's failure to submit a bond or other appropriate security running to the State, MDI's imposition of debt settlement service fees that violate the limitations prescribed by Minnesota law, and MDI's requirement that consumers resolve any disputes with MDI 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. MDI is a California corporation with its principal place of business at 1600 South Douglass Road, Suite 100, Anaheim, California 92806.

### **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 MDI because MDI does business in Minnesota and has committed acts in Minnesota causing injury to Minnesota citizens.

### **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. In May of 2004, the Federal Trade Commission (“FTC”) filed a complaint against a group of companies and individuals, including Walter Ledda. Mr. Ledda and others fronted a purported non-profit debt counseling organization called the “National Consumer Council” (“NCC”), which solicited customers through aggressive telemarketing and direct mail advertising. NCC falsely and deceptively claimed that its debt negotiation program was an effective way to stop creditors’ collection efforts and to eliminate debts. Mr. Ledda and the other defendants subsequently settled with the FTC by agreeing to a suspended judgment of \$84,300,000 (the amount of fees Mr. Ledda and the other defendants received from consumers), and Mr. Ledda was further required to pay a \$1,356,000 settlement.

9. Subsequent to the FTC enforcement action against Mr. Ledda, Mr. Ledda founded MDI. MDI promotes itself as a company to whom lawyers can delegate their debt settlement clients. MDI’s website ([www.morgandrexen.com](http://www.morgandrexen.com)) explains: “[MDI] offers an array of front end and back end services to law firms seeking to perform superior debt settlement solutions for American consumers.” The website further states:

[MDI’s] . . . highly-trained support staff and automated client services IT platform enable law firms to service more clients, more efficiently, with a greater level of attention and at a far lower cost. [MDI] . . . provides law firms with instant client support and communication, effective and accurate settlement processing, document preparation and maintenance, accounting services, multi-site integration and website access, quality control, marketing, client screening and intake.



10. The Williamson Law Firm (“WLF”) is located in Kansas City, Kansas. It purports to offer debt settlement services to Minnesota residents using MDI as its “administrative agent.” Minnesota consumers who contract with WLF to provide debt settlement service have very little -- if any -- contact with WLF.

11. After being contacted by an MDI telemarketer, a Minnesota consumer typically receives a “recap” letter from MDI. The letter restates the information provided to the consumer by MDI over the telephone. The “recap” letter sets forth the total amount of debt that the consumer seeks to settle, the amount of the projected monthly payments, the term of the payments, and the amount of projected savings. The “recap” letter bears only the name of MDI and makes no mention of WLF or any other law firm.

12. If a Minnesota consumer agrees to enroll in a MDI debt settlement program, MDI provides a welcome letter and other documents to the consumer. MDI’s welcome letter states that it is written on behalf of WLF and describes MDI as WLF’s “administrative agent.” The welcome letter is the first time many Minnesota consumers have any notice that WLF is somehow involved in the debt settlement program.

13. The welcome letter includes instructions that direct the consumer to sign various documents. The instructions state: “[MDI] is an organization dedicated in helping the American consumer return to a Debt-Free Standard of Living. We have helped thousands of good people with a similar situation return to Financial Stability.” Consumers are directed to physically sign documents and return them to MDI or to visit MDI’s website ([www.morgandrexen.com](http://www.morgandrexen.com)) and to e-verify the documents online. MDI most commonly provides consumers with MDI’s return address (1600 s. Douglass Road, Suite 100, Anaheim, CA 92806) rather than WLF’s address in Kansas City.

14. With regard to consumer funds, MDI's website further explains:

The Trust Services department of [MDI] processes all attorney trust-related financial transactions, both settlements and client deposits & returns into and out of the trust account. This includes check cutting, disbursement, and quality control, all from the trust accounts. We work to maintain flawless records and blend our efforts with our sister departments of Accounting, Settlements, and Client Services.

15. In July of 2009, the North Carolina State Bar completed an investigation of MDI and concluded that MDI was engaged in the unauthorized practice of law by "soliciting business in North Carolina for debt settlement on behalf of debtors by representing that it will provide the debtor with legal representation by a California law firm." MDI agreed as part of the action to cease taking on North Carolina customers.

16. Also in July of 2009, the North Carolina Attorney General, in conjunction with the FTC and the U.S. Department of Justice, announced a "national sweep targeting scams that rip off struggling consumers" entitled "Operation Short Change." MDI was charged as part of Operation Short Change because:

*The company claimed that attorneys, including a North Carolina attorney, would do the debt settlement negotiations. However, the attorneys provided no meaningful services to consumers.*

17. According to its website ([www.thewilliamsonfirm.com](http://www.thewilliamsonfirm.com)), WLF's sole "member" attorney, Lawrence W. Williamson, Jr., is not licensed to practice law in Minnesota. With regard to Minnesota consumers, WLF purports to offer services through John Hatling, currently registered as an attorney with the Minnesota Supreme Court's Office of Lawyer Registration. Mr. Hatling is further listed on WLF's website as "of counsel," and Minnesota consumers are asked to execute a document purporting to designate Mr. Hatling as WLF's "local counsel."

18. In September of 2008, Mr. Hatling pled guilty to one felony count of filing a fraudulent tax return. On September 16, 2009, the Minnesota Office of Lawyers Professional

Responsibility Board filed a Petition for Disciplinary Action against Mr. Hatling. The petition seeks to suspend Mr. Hatling from the practice of law or to otherwise discipline him.

19. In 2009, the Minnesota Legislature passed Minnesota Statutes Chapter 332B. Chapter 332B imposes requirements on debt settlement service providers. Pursuant to Minn. Stat. § 332B.02, subd. 13, the term “[d]ebt settlement service provider . . . includes any person to whom debt settlement services are delegated.” In summary, Chapter 332B imposes the following requirements, among others, on persons to whom debt settlement services are delegated:

- a. After August 1, 2009, Minn. Stat. § 332B.03 makes it unlawful for persons to whom debt settlement services are delegated 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, the registration of a person to whom debt settlement services are delegated 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 person to whom debt settlement services are delegated 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 any person to whom debt settlement services are delegated.
- e. Before entering the debt settlement services agreement, a person to whom debt settlement services are delegated 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 person to whom debt settlement services are delegated 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 required notice further warns debtors about their continuing liability for the fee of the a person to whom debt settlement services are delegated 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 persons to whom debt settlement services are delegated.
- h. Minn. Stat. §§ 332B.10-.11 prohibits a person to whom debt settlement services are delegated 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.

20. MDI has engaged in practices that violate Chapter 332B. Illustrative, non-exclusive examples of MDI's unlawful conduct include the following:

**J.D.**

21. J.D. is retired and lives with her husband in Roseville, Minnesota. In early November of 2009, J.D. received an unsolicited telemarketing call from a company that said it could reduce her credit card interest rate to 6.99%. After saying that she was interested in learning more, J.D. was transferred to a "supervisor," who purported to be a paralegal at WLF. The supervisor said that WLF worked with MDI.

22. The supervisor informed J.D. that MDI was a debt settlement program, and J.D. would be debt-free in 5 years. The supervisor said that J.D. would have legal representation through WLF. The MDI representative assured J.D. that this was her best option for getting out of debt. J.D. provided the supervisor with detailed information about her unsecured debts.

23. The supervisor supposedly analyzed J.D.'s debt and concluded that her monthly payment for the program would be \$280 for a period of 5 years. The supervisor told J.D. that the enrollment fee needed to be paid first and that the lawyer would get \$51 per month out of the \$280 monthly fee. The supervisor told J.D. to stop paying her creditors.

24. On November 4, 2009, MDI sent documents to J.D., including a debt settlement services agreement. J.D. and her husband signed and returned the agreement. J.D. enrolled \$22,446 of debt into MDI's debt settlement program. MDI's plan called for payments of \$280 over a period of 60 months. MDI further stated: "we expect [the debt settlement program] will save you approximately \$5,646 upon successful completion. . . . We also expect to reduce the harassing calls by contacting your creditors and explaining your hardship situation, and that you are being represented by a law firm thus reducing these calls."

25. J.D. also received a welcome letter from MDI dated November 10, 2009. The letter states:

[WLF] and its administrative agent, [MDI], will be representing you through your journey to financial freedom. Because [MDI] will be your initial point of contact, we request that you direct all further questions to your Client Coordinator whose contact information has been provided within.

The letter identifies Jose Morales, a "Debt Settlement Paralegal" at MDI, as J.D.'s Client Coordinator.

26. J.D. subsequently received a document dated November 25, 2009, entitled "Client's Designation of Law Firm Authorized to Handle Claims and Matters." WLF requested that J.D. and her husband sign the document, which purported to "designate and authorize [WLF], its attorneys, to include John Hatling, who serves as local counsel, its authorized agents (including but not limited to [MDI]), its representatives, or its employees, to handle any and all of [J.D.'s] . . . claims associated with any of our Creditors."

27. J.D.'s first money transfer to the MDI debt settlement program was initiated on November 27, 2009 in the amount of \$280. By December 8, 2009, J.D. no longer trusted MDI and called to cancel her contract.

28. J.D. and her husband incurred late fees and over the limit fees on their credit accounts and penalties due to MDI's instructions to stop making payments. In December of 2009, J.D. filed a complaint with the Minnesota Attorney General's Office asking for its assistance in helping J.D. and her husband to get a refund from MDI and WLF. Although MDI and WLF promised to return J.D.'s money, she has yet to receive a refund.

**T.M.**

29. T.M. is 47 years old and married. He has worked at an art institute for about 16 years as an in-house carpenter. T.M. was first telephoned by MDI in August of 2009. After talking to MDI, T.M. decided to enroll about \$8,000 into an MDI debt settlement program. MDI said that even after paying its fee and settling his debt, T.M. would still save almost \$2,000.

30. T.M. later received a "recap" letter from MDI dated August 19, 2009, which explained that he enrolled \$8,508 in debt. The letter further indicated that T.M.'s debt settlement program would last for 24 months and that he would pay \$278 per month. MDI said T.M. would save \$1,836 by enrolling in the debt settlement program versus repayment of his balance owed.

31. WLF was never mentioned during T.M.'s initial telephone call with MDI or in MDI's "recap" letter." T.M. did not realize that WLF had anything to do with the program until after he joined and began receiving documents from MDI. For example, T.M. received a welcome letter printed on MDI stationery and dated August 24, 2009. The letter stated that it was sent on behalf of WLF by MDI, which was described as WLF's "administrative agent." T.M. was instructed to direct all further questions to a paralegal at MDI. T.M. assumed that WLF was a law firm that MDI worked with.

32. Given MDI's establishment fee and service fees, the opening balance of T.M.'s account was negative in the amount of \$918.75. By November 30, 2009, T.M. had made several

payments, but his account balance was still negative in the amount of \$279.75. T.M. continued to make payments to MDI in December of 2009 and January of 2010, but MDI never paid any money to a single creditor.

33. T.M. decided to investigate other debt relief programs and contacted Lutheran Social Services (“LSS”). LSS informed T.M. that MDI was not licensed to offer debt settlement services in Minnesota.

34. In early January of 2010, T.M. canceled his debt settlement program with MDI and asked for his money back. MDI said that it would not return any fees but it would refund any balance that remained in T.M.’s trust account. As of the date of filing this action, T.M. has not received a refund from MDI.

35. On February 2, 2010, T.M. filed a complaint with the Minnesota Attorney General’s Office.

### **COUNT I DEBT SETTLEMENT SERVICES ACT**

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

37. 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.

38. Minn. Stat. § 332B.02, subd. 10 (2009), defines “debt settlement services” as

(1) offering to provide advice, or offering to act or acting 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; or



(2) advising, encouraging, assisting, or counseling a debtor to accumulate funds in an account for future payment of a reduced amount of debt to one or more of the debtor's creditors.

39. Minn. Stat. § 332B.02, subd. 13 (2009), defines “debt settlement services providers” as:

. . . any person offering or providing debt settlement services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. The term includes any person to whom debt settlement services are delegated.

40. Pursuant to Minn. Stat. § 332B.01, subd. 13, MDI is a “debt settlement service provider” because MDI is a “person to whom debt settlement services are delegated” by WLF.

41. As a person to whom debt settlement services are delegated, MDI has engaged in multiple, separate violations of Minn. Stat., Chapter 332B, including but not limited to the following violations:

- a. MDI 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. MDI’s debt settlement services agreement does not comply with the requirements of Minn. Stat. § 332B.06, subd. 1, in that MDI’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. MDI 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. MDI 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.
- e. Prior to entering a debt settlement services agreement with a Minnesota resident, MDI does not prepare in writing and provide to the debtor an individualized financial analysis, as required by Minn. Stat. § 332B.06, subd. 2, reflecting MDI'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, the client service agreement provided to J.D. states:

“Nothing in this Agreement and nothing in our statements to you are intended to be, and shall not be construed as, a promise or guarantee regarding the outcome of your matter. We make no promises or guarantees regarding your Debt negotiation and/or settlement and its potential or expected outcome.”

- f. Before executing a debt settlement services agreement or providing any services, MDI 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, MDI 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. MDI 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. MDI operates under a debt services agreement that 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. MDI operates under debt settlement service agreements with Minnesota residents that contain 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 California, rather than Minnesota.
- j. MDI 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. MDI has charged fees that violate the limitations set forth in Minn. Stat. § 332B.09, subd. 3. For example, upon information and belief, MDI's fees are based upon the amount of savings negotiated on behalf of the debtor, as such:
  - i. Section 332B.09, subd. 3(a), prohibits non-refundable, origination fees in excess of \$300 on aggregate debt of less than \$20,000 and in excess of \$500 on aggregate debt of \$20,000 or more; T.M.'s service agreement called for a non-refundable origination fee of \$918.75 on aggregate debt of \$8,508; J.D.'s service agreement called for a non-refundable origination fee of \$1,374.79 on aggregate debt of \$22,445.59;

- ii. Section 332B.09, subd. 3(a), prohibits monthly fees in excess of \$65 per month on aggregate debt of less than \$40,000; J.D.'s service agreement called for monthly fees of \$280, which (according to MDI and WLF debt settlement service provider agreement) "shall first be used to pay the fees" of MDI and WLF; T.M.'s service agreement called for monthly fees of \$278; at a minimum, from September through November of 2009, the entire amount of T.M.'s monthly payments were used to cover MDI's fees;
  - iii. Pursuant to Minn. Stat. § 332B.09, subd. 3(c), the sum total of MDI's origination fee, monthly fee, and settlement fee may not exceed 30 percent of the savings obtained by MDI; MDI's debt settlement plan projected that T.M. would save \$1,836, which would limit MDI's maximum fee charges to \$550.80; MDI assessed origination fees and monthly maintenance fees of \$1,998.75 against T.M.; MDI's debt settlement plan projected that J.D. would save \$5,646, which would limit MDI's maximum fee charges to \$1,693.80; MDI assessed origination fees and monthly fees of \$4,434.79 against J.D.; MDI further claimed the right to charge T.M. and J.D. an additional 25% of the difference between their enrolled debt and the settlement amount ultimately agreed to by their creditors;
  - iv. MDI 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. MDI has advised debtors to stop paying creditors in violation of Minn. Stat. § 332B.10(1) and Minn. Stat. § 332A.14(3).
  - m. MDI has violated Minn. Stat. § 332B.10(3)(iii) by implying, inferring, or representing that creditors will not continue to contact the debtor.

42. 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 MDI'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 MDI as follows:

1. Declaring that MDI's acts described in this Complaint constitute multiple, separate violations of Minn. Stat., Chapter 332B;
2. Enjoining MDI 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 MDI with any Minnesota resident since August 1, 2009, pursuant to Minn. Stat. § 332B.12;
4. Awarding judgment against MDI, 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 MDI's acts described in this Complaint;
5. Awarding judgment against MDI 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

Respectfully submitted,

LORI SWANSON  
Attorney General  
State of Minnesota

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

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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 8:34 FOURTH JUDICIAL DISTRICT

BY HENN. CO. DISTRICT DEPUTY  
COURT ADMINISTRATOR

Case Type: Other Civil  
(Consumer Protection)

State of Minnesota by its Attorney General,  
Lori Swanson,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

**COMPLAINT**

Pathway Financial Management, Inc.,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against Pathway Financial Management, Inc. ("PFMI"), 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 PFMI 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: PFMI's failure to submit a bond or other appropriate security running to the State, PFMI's imposition of debt settlement service fees that violate the limitations prescribed by Minnesota law, and PFMI's requirement that consumers resolve any disputes with PFMI 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. PFMI is a California corporation doing business at 12661 Hoover Street, Garden Grove, California 92841.

### **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), 332B.13 (2009).

5. This Court has personal jurisdiction over PFMI because PFMI 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. PFMI purports to offer debt settlement services to Minnesota residents. In particular, PFMI's client service agreement states that it "will assist [Minnesota residents] in developing a savings plan to eventually provide the ability to [PFMI] to negotiate and settle CLIENT'S debts . . . ."

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 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 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 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, PFMI has engaged in practices that violate Chapter 332B:

11. C.C. lives in Richfield, Minnesota. She is 64 years old and work part-time at Sam's Club in Bloomington. In September of 2009, C.C. noticed an internet advertisement for PFMI and telephoned the company. C.C. thereafter received several documents from PFM, including a cover letter. On September 30, 2009, C.C. completed, e-verified, and returned her debt settlement service agreement with PFMI.

12. C.C. enrolled \$16,504 of debt into PFMI's debt settlement program. PFMI indicated that its goal was to settle this debt for \$9,000 within 30 months. PFMI's contract purported to impose a 5% enrollment fee (\$825.00) and settlement fee of 20% of the difference between the enrolled debt amount and the settled amount (not to exceed 18% of the original principal amount of my debt). C.C. was to make payments of \$300 to PFMI for 30 months. In the first four months, about \$206 would go to pay PFMI's enrollment fee and only about \$94 per month would go into C.C.'s savings or settlement fund.

13. C.C. terminated her participation in the PFMI program after a couple of months because PFMI's services were of no value to her. C.C. filed a complaint with the Minnesota Attorney General's Office on December 15, 2009. PFMI has not refunded any money to C.C.

#### **COUNT I DEBT SETTLEMENT SERVICES ACT**

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

15. 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.

16. PFMI is a “debt settlement services provider” within the meaning of Minn. Stat. § 332B.02, subds. 10 and 13 (2009). Since August 1, 2009, PFMI 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.” PFMI has offered or provided its debt settlement services to debtors domiciled in the State of Minnesota.

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

- a. PFMI 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.
- b. PFMI 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. PFMI 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.
- d. PFMI's debt settlement services agreement does not comply with the requirements of Minn. Stat. § 332B.06, subd. 1, in that PFMI'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, PFMI 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, PFMI's client service agreement states: "The CLIENT further represents that [PFMI] has not provided CLIENT with any advice or recommendation regarding the advisability of reducing or terminating payments to CLIENT'S creditors. CLIENT, independently of [PFMI], has decided to reduce payments to

creditors and to seek assistance in resolving the specified outstanding creditor claims, suites or judgments.”

- f. Before executing a debt settlement services agreement or providing any services, PFMI 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, PFMI 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. PFMI 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 PFMI'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. PFMI'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 Orange County, California; and a choice of law provision stating that the agreement is to be construed in accordance with the laws of California, rather than Minnesota.
- j. PFMI charges fees that violate the limitations set forth in Minn. Stat. § 332B.09, subd. 3. In particular, PFMI's fees are based upon the amount of savings negotiated by PFMI on behalf of the debtor, as such:
  - i. Section 332B.09, subd. 3(a), prohibits non-refundable, origination fees in excess of \$300 on aggregate debt of less than \$20,000; PFMI's service agreement with C.C. called for a non-refundable origination fee of \$825.00 on aggregate debt of only \$16,504;
  - ii. Section 332B.09, subd. 3(a), prohibits monthly fees in excess of \$65 per month on aggregate debt of less than \$40,000; PFMI's service agreement with C.C. called for



monthly fees of at least \$206 for months 1 through 4 of the program; and

- iii. PFMI 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.

18. 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 PFMI'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 PFMI as follows:

1. Declaring that PFMI's acts described in this Complaint constitute multiple, separate violations of Minn. Stat., Chapter 332B;
2. Enjoining PFMI 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 PFMI with any Minnesota resident since August 1, 2009, pursuant to Minn. Stat. § 332B.12;
4. Awarding judgment against PFMI 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 PFMI's acts described in this Complaint;

5. Awarding judgment against PFMI 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

LORI SWANSON  
Attorney General  
State of Minnesota

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JEFFREY E. GRELL  
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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).

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JEFFREY E. GRELL