

STATE OF MINNESOTA
COUNTY OF KANDIYOHI

DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

State Capital Financial, Inc.,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against State Capital Financial, Inc. ("SCF"), 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 SCF 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: SCF's failure to submit a bond or other appropriate security running to the State, SCF's imposition of debt settlement service fees that violate the limitations prescribed by Minnesota law, and SCF's requirement that consumers resolve any disputes with SCF 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. SCF is a foreign corporation located at 1920 East Hallandale Beach Blvd., Suite 806, Hallandale Beach, Florida 33009.

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 SCF because SCF does business in Minnesota and has committed acts in Minnesota causing injury to Minnesota citizens.

VENUE

6. Venue in Kandiyohi County is proper under Minn. Stat. § 542.09 (2009) because the cause of action arose, in part, in Kandiyohi 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. SCF is a debt settlement service provider that offers its services to residents of Minnesota. SCF has provided debtors in Minnesota with a description of its debt settlement program. The description states (among other things):

The debt negotiations group will review your account regularly to determine if any of your accounts are in a position to settle. If an account is in position to be settled or if a creditor contacts SCF for settlement, we will inform you of our offer to the Creditor and the Creditors [sic] offer to you. You must then decide on whether you will accept the offer or wait for a better offer. SCF will then instruct you on how you should make your payment arrangements to the creditor. The process is repeated until all creditor accounts are settled.

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

J.L.

11. J.L. lives in Kandiyohi, Minnesota, is 65 years old, and is widowed. She has worked as a school bus driver for 21 years.

12. J.L. called a toll-free number that was displayed on a television advertisement regarding debt specialists. J.L. spoke to a debt specialist who purported to work for SCF. During the telephone call, J.L. agreed to enroll in an SCF debt settlement program.

13. On or about November 17, 2009, SCF faxed its debt settlement plan documents to J.L. According to the SCF documents, J.L. enrolled debt in the amount of \$20,095. Her total monthly payment to SCF was supposed to be \$336.01. The documents indicated that for months 1 through 6, J.L. would pay \$301.42 for SCF's program fee and an SCF maintenance fee of \$29.00, leaving \$5.59 for her savings account. During months 7 through 13, J.L. would pay \$172.25 for SCF's program fee and \$29 for SCF's maintenance fee, leaving \$134.76 for her

savings account. During months 14 through 36, none of J.L.'s monthly payment would go to SCF's program free, but \$29 would still go to SCF maintenance fee, leaving \$307.01 for her savings account. SCF said that the total program fee over the three year period would be \$3,014.25. Over the three year period, J.L. would also pay \$1,044 in maintenance fees. At the end of three years, J.L. would have a \$8,038 settlement fund to use for the settlement of her creditors' accounts.

14. On December 15, 2009, SCF withdrew one monthly payment of \$336.01 from J.L.'s bank account. J.L. became concerned because her creditors kept calling. She asked SCF when it was going to start paying her creditors. After speaking with SCF, J.L. understood that SCF did not intend to make any payments to her creditors for another three years. SCF said that the creditors would stop calling if J.L. got an unlisted number. SCF offered J.L. a \$20 credit on her next bill if she got an unlisted number. SCF said once J.L. got the unlisted number, she should only answer calls from SCF.

15. J.L. went to Lutheran Social Services ("LSS") for advice. LSS said that SCF was not registered under Minnesota's debt settlement laws. J.L. directed her bank to stop payment on any further SCF withdrawals from her account. J.L. faxed a letter to SCF on January 7, 2010 saying that payments were stopping because they were not registered under Minnesota law. J.L. also requested a refund.

16. On January 28, 2010, J.L. filed a complaint with the Minnesota Attorney General's Office.

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

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

- a. SCF 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. SCF’s debt settlement services agreement does not comply with the requirements of Minn. Stat. § 332B.06, subd. 1, in that SCF’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. SCF 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. SCF 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, SCF does not prepare in writing and provide to the debtor an individualized financial analysis, as required by Minn. Stat. § 332B.06, subd. 2, reflecting SCF’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, SCF’s Client / Creditor Relationship Statement states:

“The CLIENT further represents SCF has not provided the CLIENT with any advice or recommendation regarding the

advisability of reducing or terminating payments to client creditors” (emphasis in original).

- f. Before executing a debt settlement services agreement or providing any services, SCF 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, SCF 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. SCF 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. SCF'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. SCF'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. SCF 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. SCF has charged fees that violate the limitations set forth in Minn. Stat. § 332B.09, subd. 2. For example, J.L.'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 \$400 on aggregate debt of \$20,000 or more; in the first six months, SCF's agreement called for almost all of J.L.'s payments to be applied to SCF's service fee, totaling \$1,808.52 for the period; under SCF's agreement, any fees received from J.L. 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; SCF's agreement called for monthly fees of \$330.42 for months 1 through 6; and monthly fees of \$201.25 for months 7 through 13;

- iii. Section 332.09, subd. 2, prohibits SCF from claiming, demanding, charging, collecting, or receiving a fee in excess of 15 percent of the aggregate debt; SCF claimed, demanded, or charged J.L. fees that totaled \$4,085.25 (20 percent) on her aggregate debt of \$20,095; under Minnesota law, the sum total that SCF was not allowed to claim, demand, charge, collect, or receive from J.L. in the form of origination, monthly, or settlement fees was \$3,014.25:
- iv. Section 332.09, subd. 2(c) prohibits SCF from claiming, demanding, charging, collecting, or receiving more than 40 percent of the total amount of fees allowable before delivery to SCF by a creditor of a bona fide written settlement offer consistent with the terms of the debt settlement services agreement; SCF total allowable fees on aggregate debt of \$20,095 were \$3,014.25; SCF was permitted to claim, demand, or charge J.L. only \$1,205.70 before receiving a bona fide written settlement offer from a creditor; SCF claimed, demanded, or charged J.L. fees that totaled \$4,085.25 before receiving a bona fide written settlement offer from a creditor; and
- v. SCF 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. SCF 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 SCF'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 SCF as follows:

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

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

4. Awarding judgment against SCF, 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 SCF's acts described in this Complaint;

5. Awarding judgment against SCF 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 11, 2010

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

~~JEFFREY E. GRELL~~
Assistant Attorney General
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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: #2585374-v1

STATE OF MINNESOTA
COUNTY OF LE SUEUR

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota by its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

One Source Inc., d/b/a One Source
Management,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against One Source Inc., d/b/a One Source Management (“OSM”), alleges as follows:

INTRODUCTION

1. In these tough economic times, many consumers are looking for help in dealing with their debt. OSM deceives Minnesota consumers by promising to save them money by lowering the interest rates on their credit cards. OSM offers these services in return for an advance fee of up to \$998.95 but has failed to provide services to Minnesota consumers or to achieve the promised savings. The State of Minnesota, by its Attorney General, Lori Swanson, brings this consumer protection lawsuit against OSM for violations of the State’s consumer fraud, deceptive trade practices, credit services organizations, and debt settlement service provider laws.

PARTIES

2. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. §§ 8.01, 8.31, 8.32, 332.59, 325D.45, and 325F.70, 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. OSM is a foreign corporation doing business at 2015 North Dobson Road, Suite 4-363, Chandler, Arizona. In correspondence with consumers and on its website, OSM also uses the address 3029 North Alma School Road, Suite 107-42B, Chandler, Arizona.

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), 332.59, 325D.45, and 325F.70 (2008).

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

VENUE

6. Venue in Le Sueur County is proper under Minn. Stat. § 542.09 (2008) because the cause of action arose, in part, in Le Sueur County.

FACTUAL BACKGROUND

7. Since August of 2009, OSM has made unsolicited telephone calls to Minnesota consumers to market and sell its debt relief services. OSM also advertises its services via its website: www.clhconsulting.com/subdomains/onesource.

8. In its unsolicited telephone calls and other marketing efforts, OSM falsely promises that it will negotiate substantially lower credit card interest rates and guarantees thousands of dollars in savings to Minnesota consumers.

9. In return for its purported services, OSM charges Minnesota consumers an advance fee of up to \$998.95.

10. The Minnesota consumers who enroll in OSM's program are the victims of a bait-and-switch. OSM "baits" consumers with promises that it will use specialized, industry-insider knowledge to obtain reduced interest rates on credit cards. OSM represents that the consumer cannot achieve the same success working alone. OSM promises and guarantees that through its interest rate negotiation services, the consumers will save a minimum of \$2,000. OSM promises some consumers that it can secure permanent credit card interest rates as low as 6.99%, fixed.

11. During its sales-pitch, OSM asks consumers to provide a credit card number, promising that OSM fees will not be charged until after the consumer returns a completed financial information questionnaire or until after 30 days pass without cancelation. Consumers report, however, that OSM immediately charges its fee to the consumers' accounts, rather than waiting for the return of the consumers' financial information or for 30 days.

12. After OSM collects its fee, OSM "switches" the type of service it promises to consumers. OSM's telemarketers state that OSM will negotiate lower interest rates with credit card companies, but in actuality OSM promises only to provide a debt elimination plan.

13. Several days after it charges a consumer's credit card, the consumer receives a welcome package, which includes an OSM letter, a financial information questionnaire, and OSM's service terms. OSM's welcome letter states:

You want to fill . . . out [the enclosed forms] to provide your financial advisor with an accurate "financial picture". Everyone's financial situation is unique. With your forms, your financial advisor will map out a custom debt elimination plan specific to your financial needs. . . .

It is important that we know what you are paying now, because our program will save you money without requiring you to pay any additional funds. . . .

14. OSM's website further advises that consumers should "[t]alk to your financial advisor for a customer debt analysis, they will start with your interest rates." Analyzing a consumer's interest rates, however, is not the same as obtaining interest rate reductions on behalf of a consumer. Based upon the telemarketers' representations, consumers enroll in the program to obtain OSM's assistance in reducing their interest rates, not to hear an opinion that they are paying too much in credit card interest.

15. OSM's "Service Terms" further establish that OSM's \$2,000 in guaranteed savings will be reflected in a debt elimination plan and will not be achieved through interest rates reductions. OSM's "Service Terms" state:

The undersigned client(s) hereby acknowledges the product: software and services rendered by One Source. One Source will show me a minimum savings of \$2,000 on the analysis. . . .

. . . One Source does not guarantee any specific rate. We do however guarantee a minimum savings of \$2,000 once the custom debt analysis service is complete.

16. The welcome package is the only "benefit" that some consumers receive from OSM. OSM provides some consumers with no further services whatsoever. Consumers also report that OSM is non-responsive, that OSM's telephones are not answered, and that OSM does not return messages.

17. When OSM consumers contact the company for a refund, the request is denied. OSM's "Service Terms" state: "If all balances are zero within 90 days of enrollment client will qualify for a full refund." Most of OSM's consumers are having difficulty making their monthly payments and cannot possibly pay off all of their credit card debt within 90 days.

18. Upon information and belief, OSM's debt elimination plan purports to "show" that consumers can save money by accelerating payments and/or by obtaining assumed interest rate reductions. Of course, most consumers already know that they can save money by

increasing their monthly payments to creditors. The problem is that most OSM consumers cannot afford to pay their minimum amounts due and are looking for assistance in reducing their monthly payments. Moreover, the assumed interest rate reductions are not, in fact, guaranteed by OSM. Because most consumers are unable to accelerate their payments, the consumers cannot achieve the savings “shown” in OSM’s plan.

19. One Minnesota consumer was also told by her bank that she was not entitled to better credit terms because of issues appearing on her credit report. In response to this information, OSM sent a letter to the consumer. The letter states:

Please find enclosed a Limited Power of Attorney. Your financial advisor feels that information found on your credit report may be causing negative effects on your interest rates or your ability to obtain a new account. We have you sign the Limited Power of Attorney so we can order your credit reports on your behalf . . .

. . . [Once your credit report is received,] your advisor will look over your credit reports and discuss your options based on the information contained on your credit reports. Keep in mind roughly 80% of Americans have inaccurate information on their credit reports. The more accurate your reports are the better interest rates your advisor will be able to help you obtain. This is not the end of the road, just a bump, on your journey to saving money.

The Limited Power of Attorney further states:

Client grants [OSM] a limited power of attorney . . . to: 1) use the personal information Client provides to [OSM] to obtain from credit bureaus, creditors, collection agencies and other holders of records . . . of Client’s credit reports, credit history or other creditor information . . . ; 2) sign correspondence to the Record Holders; 3) sign correspondence addressed to creditors; 4) obtain credit information over the telephone, fax, through written correspondence from Record Holders; and 5) review and store Client Information.

20. Although OSM purports to provide its Minnesota consumers with credit assistance services, OSM is not registered as a credit services organization with the Minnesota Commissioner of Commerce, as required by Minn. Stat. § 332.54, subd. 1 (2008). OSM also has not filed a bond with the Department of Commerce, as required by Minn. Stat. § 332.55 (2008).

In addition, OSM unlawfully charges up-front fees to Minnesota consumers, in violation of Minn. Stat. § 332.56, subd. 1 (2008). OSM fails to provide consumers with the disclosure statement mandated by Minn. Stat. § 332.57 (2008). OSM's purported contracts with Minnesota consumers are also unlawful in that the contracts fail to conform to the requirements of Minn. Stat. § 332.58, which mandates (among other things) that contracts set forth:

- a full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed or the estimated length of time for performing the services;
- with respect to the previous calendar year or the time period the credit services organization has been in business, whichever is shorter, the percentage of the credit services organization's customers for whom the credit services organization has fully and completely performed the services the credit services organization agreed to perform for the buyer; and
- a statutorily-mandated notice of cancellation rights.

21. The following are illustrative, but non-exclusive, examples of OSM's unlawful practices:

D.S.

22. D.S. lives in Montgomery, Minnesota and is retired. On August 11, 2009, D.S. received an unsolicited telemarketing call from OSM. OSM said that it could lower the interest rates on her credit cards and would save her a minimum of \$2,000. D.S. initially declined the offer but agreed to enroll when OSM dropped its advance fee from \$1,000 to \$698.95. D.S. felt that the telemarketer used very high pressure tactics.

23. D.S. was then transferred to another OSM representative who recorded her agreement to the program. D.S. felt discouraged from asking questions during the verification process. The telephone call lasted nearly 30 minutes. D.S. immediately regretted her decision to

enroll. D.S. called OSM back within a half-hour to cancel, but she was told by an OSM representative that it was too late to cancel.

24. About two weeks after D.S. enrolled, she and OSM contacted one of her credit card companies. The credit card company would not lower her interest rate because of something on her credit report. OSM then stated that D.S. would receive a form that would enable OSM to research her credit report and determine why she was not entitled to an interest rate reduction.

25. The form that OSM sent to D.S. was a "limited power of attorney." D.S. refused to give OSM power of attorney. OSM stated that if she was not willing to sign the power of attorney, OSM could not help her. OSM never previously mentioned the need for D.S. to sign a power of attorney. Because OSM never saved D.S. \$2,000, she requested a refund of her advance fee. OSM said that D.S. could only get a refund if she paid off one of her credit cards before November 11, 2009. After paying off this credit card, D.S. again requested a refund from OSM. OSM then said that she would only get a refund if her and her husband paid off all of their credit card debts.

26. D.S. then complained to the Minnesota Attorney General's Office. OSM thereafter agreed to refund D.S.'s \$698.95 advance fee.

K.T.

27. K.T. lives in Deerwood, Minnesota. In December of 2008, K.T.'s wife suffered a stroke and has since had difficulty clarifying issues and making decisions. On August 25, 2009, K.T.'s wife received an unsolicited telemarketing call from OSM. The telemarketer requested her credit card numbers and said that OSM could lower her credit card interest rates. K.T.'s wife believed there was some sort of association between the government and OSM. K.T.'s wife

provided OSM with a valid Sears credit card number. K.T.'s wife did not believe she would be charged OSM's \$998.95 advance fee until after she had a chance to review OSM's written materials.

28. On August 29, 2009, K.T. received an OSM package containing papers and forms that requested very sensitive financial information. K.T. called OSM, explained his wife's medical condition, said he was not going to provide any additional financial information, and requested that OSM reverse its charge. OSM refused to reverse the charge against K.T.'s credit card.

29. K.T. then canceled his credit card and disputed the charge through his credit card company. K.T. also complained to the Minnesota Attorney General's Office. Nearly 3 months later, OSM agreed to refund K.T.'s money. K.T. has not yet received the refund.

K.H.

30. K.H. lives in Rochester, Minnesota. On August 14, 2009, she received an unsolicited telemarketing call from OSM. The telemarketer said that the interest on her credit cards was increasing. K.H. thought that OSM was her credit card company or was affiliated with her credit card company. After talking to the representative, K.H. believed that OSM had a program that would permanently reduce her interest rates to 6.99%, fixed and that the lower interest rates were made possible by new federal legislation. K.H. did not agree to enroll in the OSM program.

31. On August 20, 2009, K.H. received another telephone call from the same OSM telemarketer. K.H. was again convinced that OSM could reduce all her credit card interest rates to 6.99%, fixed. K.H. also had the impression that OSM would contact all of her credit card companies and get everything set up. K.H. does not recall the telemarketer ever disclosing a fee

for any services, but K.H. recalls that the telemarketer guaranteed, among other things, that K.H. would save a minimum of \$2,000.

32. K.H. was transferred to a “verifier.” While recording K.H.’s agreement, K.H. first became aware of OSM’s fee of \$998.95. K.H. recalls that the verifier could not guarantee a 6.99% fixed interest rate on all her credit cards, which was exactly the opposite of what the telemarketer had guaranteed. K.H. thought she was guaranteed savings of \$2,000, so the OSM fee would be a wash.

33. The verifier obtained K.H.’s credit card information. K.H. understood that OSM’s fee would not be deducted from her card for another 30 days. OSM nevertheless deducted the fee from K.H.’s account on the very same day. A few days later, K.H. called to see why OSM had already charged her card. K.H. was told that someone would call her back, but no one ever returned her call.

34. On September 16, 2009, an OSM representative telephoned K.H. After speaking to the representative, K.H. had the impression that OSM could not reduce her interest rates because her credit score was too bad, she had too much debt, and she had to pay down her debt. The OSM representative and K.H. discussed whether she could refinance her home and put her credit card debt on her mortgage. K.H. was not willing to refinance her home. K.H. requested a refund, and the OSM representative hung up on her.

35. On September 17, 2009, K.H. again called OSM. The person answering the telephone said that OSM had already charged its fee to K.H.’s credit card, and there was nothing she could do. K.H. said that she was calling the Better Business Bureau and the Attorney General. The OSM representative said: “Knock yourself out.” K.H. contacted the Minnesota

Attorney General's Office and disputed OSM's charge with her credit card company. OSM's charges were thereafter eventually reversed.

**COUNT I
PREVENTION OF CONSUMER FRAUD ACT**

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

37. Minn. Stat. § 325F.69, subdivision 1 (2008) provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

38. The term "merchandise" within the meaning of Minn. Stat. § 325F.69 includes services. *See* Minn. Stat. § 325F.68, subd. 2 (2008).

39. OSM's deceptive and fraudulent practices and false and misleading statements include, but are not limited to:

- a. misrepresenting to Minnesota consumers that they will save thousands of dollars, when OSM knows that it has no reasonable basis for making such representations;
- b. misleading Minnesota consumers with representations that they will save thousands of dollars by reason of interest rate reductions, knowing that it will only "show" thousands of dollars in savings on a debt elimination plan that is infeasible for OSM's target customers to follow;
- c. deceptively referring to or implying that it is part of a government program to help consumers reduce their credit card debt or credit

card interest rates or affiliated with the consumer's credit card company;

- d. deceptively stating that OSM's fee will be a "wash" or not cause the consumer to experience any actual cost; and
- e. misrepresenting to Minnesota consumers that their credit cards will not be charged for 30 days or until OSM receives the consumers' financial information.

40. OSM's conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.69. OSM has engaged in deceptive and fraudulent practices, and has made false and misleading statements, with the intent that other rely thereon in connection with the sale of OSM's services. By failing to disclose and omitting material facts, OSM has further engaged in deceptive and fraudulent practices in violation of the Consumer Fraud Act.

41. Pursuant to Minn. Stat. §§ 8.31, 325F.70, and other authority, the Attorney General is entitled to injunctive relief, restitution, civil penalties, costs, attorneys' fees, and other equitable relief by reason of OSM's violations of Minn. Stat. § 325F.69.

COUNT II UNIFORM DECEPTIVE TRADE PRACTICES ACT

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

43. Minn. Stat. § 325D.44, subdivision 1 (2008) provides, in part:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(5) represents that goods or services have... characteristics... benefits...that they do not have...

(7) represents that goods or services are of a particular standard, quality, or grade...if they are of another;...

(9) advertises goods or services with intent not to sell them as advertised...

(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

44. OSM's conduct described above constitutes multiple, separate violations of Minn. Stat. § 325D.44, subd. 1. OSM has engaged in deceptive practices by representing that its services have characteristics and benefits that they do not have; representing that its services are of a particular standard, quality, or grade when they are of another; advertising its services with intent not to sell them as advertised; and engaging in other conduct which similarly creates a likelihood of confusion or of misunderstanding. By failing to disclose and omitting material facts, OSM has further engaged in deceptive and fraudulent practices in violation of the Uniform Deceptive Trade Practices Act.

45. Pursuant to Minn. Stat. §§ 8.31, 325D.45, and other authority, the Attorney General is entitled to injunctive relief, restitution, civil penalties, costs, attorneys' fees, and other equitable relief by reason of OSM's violations of Minn. Stat. § 325D.44.

COUNT III CREDIT SERVICES ORGANIZATION ACT

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

47. Minn. Stat. § 332.52, subd. 3 (2008), provides:

"Credit services organization" means any person that, with respect to the extension of credit by others, sells, provides, performs, or represents that the person will sell, provide, or perform, in return for the payment of money or other valuable consideration, any of the following services:

- (1) improve a buyer's credit record, history, or rating;
- (2) obtain an extension of credit for a buyer; or
- (3) provide advice or assistance to a buyer with regard to either clause (1) or (2).

48. OSM is a “credit services organization” within the meaning of Minn. Stat. § 332.52, subds. 2 and 3 (2008). In return for the payment of money, OSM sells a service that purports to provide advice or assistance to Minnesota consumers with regard to their credit record, history, or rating.

49. As a credit services organization, OSM has engaged in multiple, separate violations of Minn. Stat. § 332.54, subd. 1 (2008), in that OSM has offered, advertised, executed, or caused to be executed contracts without registering as a credit service organization with the Minnesota Commissioner of Commerce.

50. As a credit services organization, OSM has violated Minn. Stat. § 332.55 (2008), in that OSM has never submitted a surety bond to the Minnesota Commissioner of Commerce.

51. As a credit services organization, OSM has engaged in multiple, separate violations of Minn. Stat. § 332.56, subd. 1 (2008) in that, among other things:

- a. OSM charges or receives money prior to full and complete performance of the services it has agreed to perform; and
- b. OSM makes and uses untrue or misleading representations in the offer or sale of its services, and engages in acts, practices, or a course of business that operates as fraud or deception upon the Minnesota buyers to whom it offers or sells its services.

52. As a credit services organization, OSM has committed multiple and separate violations of Minn. Stat. § 332.57, subd. 1 (2008) in that, among other things: (i) OSM fails to provide Minnesota buyers with a statement conforming to Minn. Stat. § 332.57, subd. 2, before the execution of a contract or agreement between a buyer and OSM or before the receipt by OSM of any money from a buyer; and (ii) OSM fails to maintain on file for a period of two years

an exact copy of the above-mentioned statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

53. As a credit services organization, OSM has committed multiple and separate violations of Minn. Stat. § 332.58 (2008) in that, among other things: (i) the contracts between OSM and Minnesota buyers fail to conform to the requirements of Minn. Stat. § 332.58, subd. 1; (ii) OSM fails to provide buyers with the notice of cancellation set forth in Minn. Stat. § 332.58, subd. 2; and (iii) OSM fails to give to the buyer a copy of a completed contract signed by OSM and the buyer at the time the contract is signed.

54. Pursuant to Minn. Stat. §§ 8.31, 332.59 and other authority, the Attorney General is entitled to injunctive relief, restitution, civil penalties, costs, attorneys' fees, and other equitable relief by reason of OSM's violations of Minn. Stat. §§ 332.54 - 332.58.

RELIEF

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

1. Declaring that OSM's acts described in this Complaint constitute multiple, separate violations of Minn. Stat. §§ 332.54, 332.55, 332.56, 332.57, 332.58, 325D.44, and 325F.69;

2. Enjoining OSM 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. §§ 332.54, 332.55, 332.56, 332.57, 332.58, 325D.44, and 325F.69;

3. Awarding judgment against OSM for civil penalties pursuant to Minn. Stat. §§ 8.31, subd. 3, for each separate violation of Minn. Stat. §§ 332.54, 332.55, 332.56, 332.57, 332.58, 325D.44, and 325F.69;

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

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

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

Dated: February 18, 2010

LORI SWANSON
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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: #2564655-v1