

**NOTIFY**

70

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

DMB FINANCIAL, LLC, DANIEL KWIA TEK, and  
GLOBAL CLIENT SOLUTIONS, LLC,

Defendants.

Civil Action No.  
1884CV01472-BLS1

**FINAL JUDGMENT AS TO DMB FINANCIAL, LLC,  
AND DANIEL KWIA TEK, BY CONSENT**

Plaintiff, the Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, and Defendants DMB Financial, LLC, and its executive, Daniel Kwiatek (hereinafter, collectively, "DMB" or "Defendants"), consent to the entry of this Final Judgment by Consent ("Final Judgment") and its provisions in order to resolve this litigation without further trial or adjudication.

**Whereas**, the Commonwealth alleges in its amended complaint, filed November 21, 2019 and attached hereto as Exhibit A ("Complaint"), that DMB engaged in (i) unfair and deceptive acts and practices in Massachusetts in violation of the Massachusetts Consumer Protection Act, G. L. c. 93A, § 2, and regulations promulgated thereunder, and (ii) the unauthorized practice of law in violation of G.L. c. 221, §§ 46 and 46C;

**Whereas**, the Complaint seeks injunctive and monetary relief;

**Whereas**, notwithstanding that DMB disputes the allegations of wrongdoing in the Complaint and/or that it has engaged in any violation of the law, DMB agrees to the entry of this

JUDGMENT ENTERED ON DOCKET  
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)  
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-  
VISIONS OF MASS. R. CIV. P. 77(c), AS FOLLOWS

Healey sent  
03021  
MLW  
MABO  
BKG  
JCLB  
MS  
MCCFGIP

*Aug 30 2021*

Final Judgment without the admission of any fact, conclusion of law, violation of law, or any other wrongdoing in order to resolve the Commonwealth's Complaint and avoid the cost and uncertainty of further litigation;

**Whereas**, DMB acknowledges that this Court has subject matter and personal jurisdiction over this action and consent to the entry of this Final Judgment in the above-captioned action;

**Whereas**, DMB waives all rights of appeal and also waives the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure.

**NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED:**

**I. JURISDICTION AND VENUE**

1. This court has jurisdiction over the subject matter and the parties to the above-captioned action.

2. Venue in this court is proper under G. L. c. 93A, § 4, and the Attorney General is authorized to bring this action under G. L. c. 93A, § 4.

**II. DEFINITIONS**

3. "Effective Date" shall mean the date on which the Court approves and enters this Final Judgment.

4. Unless the context clearly indicates otherwise, the term "consumer" shall refer only to individuals who are residents of the Commonwealth of Massachusetts.

### **III. PARTIES SUBJECT TO FINAL JUDGMENT**

5. This Final Judgment shall extend to DMB, and its parents(s), subsidiaries, officers, employees, agents, representatives, affiliates, successors, and assigns, or any other person acting under its direction and control, directly or indirectly, and shall constitute a continuing obligation.

6. Defendant DMB Financial, LLC is a for-profit Massachusetts limited liability company with its usual and principal place of business at 500 Cummings Center, Third Floor, Beverly, MA 01915.

7. Defendant Daniel Kwiatek is one of two owners of DMB and is the Chief Operating Officer and a manager of the company.

### **IV. INJUNCTIVE RELIEF**

8. Defendants, whether acting directly or indirectly, individually or through employees, officers, subsidiaries, agents, representatives, affiliates, successors, and/or assigns or through any corporate or other device, are hereby permanently enjoined from:

- a. Making deceptive and unsubstantiated claims about DMB's ability to settle consumers' debts. Violations of this paragraph shall include, but shall not be limited to, failing to adhere to the Guidance of the staff of the Federal Trade Commission on how to comply with the Telemarketing Sales Rule, 16 CFR Part 310, set forth in the section entitled "Making Truthful and Substantiated Claims" at pages 10-14 of "Debt Relief Services & the Telemarketing Sales Rule: A Guide for Business," (July 2010) (attached as Exhibit B).
- b. Failing to include clear, conspicuous and prominent disclosures, on its website and in any materials provided to consumers in which DMB makes numerical representations regarding program outcomes, affirmatively disclosing:

The percentage of enrolled consumers who fail to complete DMB's debt settlement program (to be calculated annually), where a consumer is deemed to "have failed to complete" the program if: (1) the consumer expressly notifies DMB that s/he has terminated the program; (2) DMB affirmatively terminates the consumer's program;

or (3) the consumer fails to make program payments for six consecutive months;

- c. Failing to include clear, conspicuous and prominent disclosures in all of its advertising and marketing materials, provided to prospective Massachusetts clients, affirmatively disclosing the harms caused by DMB's debt settlement program, including without limitation:
  - i. that consumers' credit will likely suffer;
  - ii. that the consumers may be sued by creditors and/or professional debt collectors, and such disclosure shall include:
    - 1. the percentage of DMB's clients in Massachusetts who are sued by creditors and professional debt collectors (to be calculated annually);
    - 2. that, in the event that a consumer is sued regarding a debt enrolled with DMB, DMB will no longer advise or represent the client regarding that debt or negotiate on behalf of a consumer with regard to that debt;
  - iii. that consumers' debts will continue to grow through accrued interest and fees while enrolled in DMB's program and that the debt balances owed by consumers who fail to complete DMB's program increase;
- d. Failing to clearly, conspicuously and prominently disclose to prospective enrollees the time by which DMB will make a bona fide settlement offer to each of the consumer's creditors and the amount of money or the percentage of each outstanding debt that the consumer would need to accumulate before DMB would make a bona fide settlement offer to each of the consumer's creditors;
  - i. Such disclosure must be made regarding each individual debt enrolled by the consumer in DMB's debt settlement program;
  - ii. DMB may satisfy such disclosure requirements by providing good faith estimates of the time and money required for DMB to make a

bona fide settlement offer to each of the consumer's creditors only if the following conditions are met:

- a. With respect to any estimate of the time by which DMB will make a bona fide settlement offer to each of the consumer's creditors, such estimate must be based on the type of program offered, the consumer's particular debts, and available historical data regarded similarly-situated consumers' experiences with creditors;
  - b. With respect to any estimate of the amount of money or the percentage of each outstanding debt that the consumer would need to accumulate before DMB would make a bona fide settlement offer to each of the consumer's creditors, such estimate must be based on DMB's historical experience and other information indicating the threshold amount of money that, if offered to the particular creditor, is reasonably likely to result in a successful settlement that is consistent with results represented by DMB; and
  - iii. DMB must keep consumers informed throughout the duration of the debt settlement program of any changes in creditor policies that may impact the projected time or amount of money needed before completion;
- e. Requesting and receiving settlement fees other than those calculated as a fixed percentage of either (i) the amount of a consumer's debts at the time the consumer enrolled in DMB's debt settlement program, or (2) the amount of savings achieved by the consumer under DMB's debt settlement program;
  - f. Collecting a settlement fee before a consumer has made at least one payment pursuant to a settlement negotiated by DMB;
  - g. Failing to provide a refund to a consumer of a portion of a settlement fee collected by DMB in the event that the consumer does not complete making payments on the applicable settlement for which DMB took such fee, to be calculated in the following manner:
    - i. In the circumstances outlined in section 8.g. above, DMB shall refund to the consumer an amount equal to: the difference between (a) the total amount of any settlement fees actually collected by DMB on the applicable debt settlement minus (b) the product of (i) the total amount of fees collectable on the debt times (ii) the quotient of (A) the sum of the settlement payments actually made to the creditor under the applicable settlement plan divided by (B)

the total amount payable to the creditor under the applicable settlement plan;<sup>1</sup> and

- ii. DMB shall provide the consumer with such a refund on the 25<sup>th</sup> day of the month following the cancellation, by the creditor or consumer, or renegotiation of a settlement plan without requiring any additional action or notice from the consumer to initiate such refund;
- h. Enrolling a consumer in DMB's debt settlement program unless DMB reasonably believes such consumer is likely to complete DMB's debt settlement program on the basis of a budget analysis conducted by DMB prior to enrolling the consumer in DMB's debt settlement program;
- i. Such budget analysis shall include, at a minimum, an analysis of the consumer's total aggregate and discretionary income, and itemized monthly expenses, including, without limitation and as applicable: mortgage/rent, utilities, internet, cellphone, food, auto loan, auto insurance, child care, student loans, medical insurance, medical costs; and
  - ii. DMB shall not enroll any consumer for whom the budget analysis mandated by section 8.h. above indicates that the consumer's monthly income, after expenses are deducted, is less than the cost of DMB's program.
- i. Directing consumers to stop communicating with or making payments to their creditors;
- j. Advising, representing or negotiating on behalf a consumer who is sued for nonpayment of a debt with regard to that particular debt;
- k. Failing to promptly provide consumers who are sued for nonpayment of debts enrolled with DMB with the list of available resources attached hereto as Exhibit C.
- i. The Attorney General may direct DMB to update Exhibit C to include additional resources as they become available and remove resources that are no longer available; and
- l. Misrepresenting, or assisting others in misrepresenting, expressly or impliedly, the identity and nature of DMB and its affiliates' business.

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<sup>1</sup> IE: [total fees collected] - [(total fees collectable) x (total settlement payments paid to creditor)]  
total settlement payments payable to creditor

9. In the event that DMB markets legal services to consumers or connects consumers with specific law firms, any agreements for such services must be entered into by consumers on an opt-in rather than opt-out basis.

10. Nothing enumerated herein shall relieve DMB of the obligation to comply with all applicable Federal and state laws and regulations.

#### V. MONETARY PAYMENT

11. Within the time set forth below, DMB shall pay a total of \$1,000,000 to the Commonwealth. At her sole discretion, and so long as permitted by law, the Attorney General shall distribute this payment, in any amount, allocation, or apportionment:

- a. For payments to or for consumers, including use by the Attorney General in the facilitation of the relief under this Final Judgment; and/or
- b. To the General Fund of the Commonwealth of Massachusetts; and/or
- c. To the Local Consumer Aid Fund established pursuant to M.G.L. c. 12, § 11G; and/or
- d. For programs or initiatives designed to address the negative effects of unfair or deceptive practices related to debt settlement programs.

12. Nothing in this Final Judgment shall be construed to characterize this payment, or any portion thereof, as a penalty, fine, or forfeiture.

13. Upon entry of this Final Judgment, the Defendants, jointly and severally, shall pay the Commonwealth \$1,000,000 as follows:

- a. \$200,000 to be paid within 30 days of entry of this consent judgment;
- b. Equal payments of \$50,000 to be made each month for the subsequent 11 months, to be completed within 12 months of entry of this consent judgment; and
- c. \$250,000 within one year of the Effective date.

14. Unless otherwise directed by the Attorney General, payments made pursuant to this Final Judgment shall be made by wire transfer or certified check, made payable to the “Commonwealth of Massachusetts,” and shall be delivered to Yael Shavit, Assistant Attorney General, Consumer Protection Division, One Ashburton Place, Boston, Massachusetts 02108.

15. DMB shall provide the Attorney General’s Office with the following information:

- a. The consumer name, account number, contact information, total debt at settlement, total debt at enrollment, date of enrollment, total verified debt, date of debt verification, and amount of settlement fee collected, for each settlement for which since May 18, 2014, DMB collected a fee from a Massachusetts consumer that did not result in elimination of the debt enrolled by the consumer in DMB’s debt settlement program;
- b. The consumer name, account number, contact information, total debt at settlement, total debt at enrollment, date of enrollment, total verified debt, date of debt verification, date of first payment pursuant to the relevant settlement negotiated by DMB, date of first settlement fee payment, amount of first settlement fee payment, and total amount of settlement fee collected prior to first payment to creditor, for each settlement for which, since May 18, 2014, DMB collected a fee from a Massachusetts consumer before the consumer had made at least one payment pursuant to a settlement negotiated by DMB; and
- c. The consumer name, account number, contact information, total debt at settlement, total debt at enrollment, date of enrollment, total verified debt, date of debt verification, and amount of settlement fee collected, for each settlement for which DMB collected a fee from a Massachusetts consumer, since May 18, 2014, that was greater than the fees that would have been collected had DMB’s settlement fee been based on the amount of the debt at the time of enrollment.

16. DMB shall provide the Commonwealth with read-only access to the Massachusetts accounts in its data management system for a period of one year following entry of this consent judgment.

17. If DMB fails to make the payments required by Paragraph 10 in a timely fashion, the release set forth in paragraph 34 of this Consent Judgment shall be void *ab initio*.



## **VI. REPORTING AND COMPLIANCE**

18. Within thirty (30) days of the Effective Date, DMB shall certify compliance with the terms and practices changes set forth in Section IV of this Final Judgment.

19. Upon the request of the Attorney General or her representatives, DMB shall produce documents and/or provide information reasonably necessary to establish compliance and/or efforts to comply with the injunctive terms contained in Section IV. Such request may not be made more than once every 12 months.

20. Within thirty (30) days of the Effective Date and annually thereafter for a period of five years, DMB shall provide reporting to the Attorney General's Office.

21. DMB shall include in its annual reporting an account activity spreadsheet documenting:

- a. All enrolled Massachusetts consumer account numbers;
- b. Consumer name and contact information (to be used exclusively for the purposes of verifying DMB's compliance with the terms of this Final Judgment and providing any monetary payments to consumers);
- c. All enrolled consumer debts of each account and Unique Debt ID;
- d. Original creditor;
- e. Current creditor;
- f. Date of enrollment;
- g. Debt balance at time of enrollment;
- h. Date DMB verified the debt with the creditor;
- i. Verified debt amount;
- j. Current debt amount;
- k. Settlement date;
- l. Settlement amount;
- m. Date of consumer's first payment on settled debt;
- n. Original monthly payment on settled debt;
- o. Original program length of settlement;
- p. Date on which DMB's first fee payment was requested;
- q. First fee payment amount;
- r. DMB's total fee;
- s. Date DMB's fee was paid in full;
- t. Account start date;
- u. Account termination date (if any);
- v. Days in program;

- w. Account status;
- x. Settlement status
- y. Date of consumer's last program payment to the consumer's Global account
- z. Whether a summons has been issued on the debt;
- aa. Date of summons;
- bb. Date DMB informed consumer that DMB could not continue representing them due to summons and provided resource information sheet to consumer; and
- cc. Law firm that issued the summons.

22. DMB shall include in its annual reporting a budget analysis spreadsheet

documenting:

- a. Account number;
- b. Consumer name and contact information (to be used exclusively for the purpose of verifying DMB's compliance with the terms of this Final Judgment and providing any monetary payments to consumers);
- c. Consumer aggregate monthly income;
- d. Consumer aggregate annual income;
- e. Consumer discretionary income;
- f. Itemized list of consumer monthly expenses;
- g. Consumer total cost of living;
- h. DMB monthly payment;
- i. Discretionary income after DMB monthly payment;
- j. Consumer foreclosure status (if known to DMB); and
- k. Consumer bankruptcy status (if known to DMB).

23. DMB shall include in its annual reporting a consumer refund spreadsheet

identifying consumers to whom a refund is due pursuant to Section IV, and such spreadsheet

should include:

- a. Account number;
- b. Consumer name and contact information (to be used exclusively for the purpose of verifying DMB's compliance with the terms of this Final Judgment and providing any monetary payments to consumers);
- c. Amount of settlement fee taken;
- d. Full settlement fee payable;
- e. Details of settlement plan;
- f. Details of payments made by consumer toward settlement plan;
- g. Date of consumer's last payment on settlement plan;
- h. Amount of refund provided to consumer by DMB; and
- i. Date on which DMB provided consumer refund.

24. For a period of five years following the Effective Date, DMB shall notify the Attorney General's Office of changes to DMB's consumer contract for Massachusetts residents, website, and any other advertising or pre-enrollment materials, and shall provide the Attorney General's Office with a copy of the revised documents.

25. DMB shall maintain records of all information and documents substantiating its advertising claims to the public and shall produce such documentation upon request by the Attorney General's Office. Such request may not be made more than once every 12 months.

## VII. NOTICES

26. All notices and documents required by this Final Judgment shall be provided in writing, by email and first-class mail, to the parties as follows:

a. If to the Attorney General:

Yael Shavit  
Max Weinstein  
Miranda Cover  
Assistant Attorneys General  
Consumer Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200  
[yael.shavit@mass.gov](mailto:yael.shavit@mass.gov)  
[max.weinstein@mass.gov](mailto:max.weinstein@mass.gov)  
[mercy.cover@mass.gov](mailto:mercy.cover@mass.gov)

b. If to DMB:

Shepard Davidson  
Burns & Levinson LLP  
125 High Street  
Boston, MA 02110  
(617) 345-3336  
[sdavidson@burnslev.com](mailto:sdavidson@burnslev.com)

## **VIII. ADDITIONAL PROVISIONS**

27. Continuing Jurisdiction. The parties to this Final Judgment consent to the continuing jurisdiction of the Suffolk County Superior Court for the purpose of enforcing or modifying the terms of this Final Judgment or for granting such further relief as the Court deems just and proper. The injunctive relief provisions of this Final Judgment place DMB under the restraint of a direct order of the Court that they refrain from doing the particular acts stated herein. Any violation of the terms of this Final Judgment may result in DMB being adjudged in contempt of court and subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation, pursuant to G. L. c. 93A, § 4, and any other restitution and/or penalties permitted by law. The Commonwealth shall provide DMB with ten (10) days' notice and an opportunity to confer prior to seeking the judicial relief described in this provision.

28. Governing Law. The provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

29. Severability. The provisions of this Final Judgment shall be severable, and should any provisions be declared by a Court of competent jurisdiction to be unenforceable, the other provisions of this Final Judgment shall remain in full force and effect.

30. Conduct Not Condoned. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of DMB's acts or practices, and DMB shall make no representations to the contrary.

31. Entire Agreement. This Final Judgment contains the complete agreement between the Commonwealth and the Defendant. No promises, representations, or warranties other than those set forth in this Final Judgment have been made between the Commonwealth and the Defendant. This Final Judgment supersedes all prior communications, discussions, or

understandings, if any, between the Commonwealth and the Defendant, whether oral or in writing.

32. Modification. This Final Judgment may not be changed, altered, or modified, except by further order of the Court.

33. Requirements Maintained. It is the intention of the parties that the provisions of this Final Judgment do not contravene Defendant's obligation to comply with all applicable state and Federal laws and regulations.

34. Release. Entry of this Final Judgment by the Court resolves, releases, and discharges any and all actual and potential civil liability of DMB and Defendant Daniel Kwiatek to the Commonwealth for all claims specifically alleged or based on facts alleged in the Complaint, attached as Exhibit A to this Final Judgment, and all potential civil claims the Commonwealth has related to DMB's debt settlement practices prior to the entry of this Final Judgment. Nothing in this Final Judgment releases or discharges any actual or potential civil liability of any parties not named in this release, including, without limitation, any and all third party entities with whom DMB has contracted or may contract in the future. Nothing in this Final Judgment resolves, settles, or otherwise affects any other claim or action. Entry of this Final Judgment shall not be admissible in any other proceeding as evidence of wrongdoing by DMB or a concession of responsibility by DMB, except as necessary for the Attorney General to enforce the terms of this Final Judgment.

SO ORDERED: *Davis, J.*

Dated: *August 2*, 2021

By *Klora Brooks*  
Assistant Clerk

# **EXHIBIT A**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.  
1884CV01472-BLS1

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COMMONWEALTH OF MASSACHUSETTS		)	
		)	
Plaintiff,		)	
		)	
v.		)	<b>FIRST AMENDED</b>
		)	<b>COMPLAINT</b>
DMB FINANCIAL, LLC, DANIEL KWIATEK, an		)	
individual, and GLOBAL CLIENT SOLUTIONS, LLC,		)	
		)	
Defendants.		)	
<hr/>		)	

The Commonwealth of Massachusetts (the “Commonwealth”), by and through its Attorney General, Maura Healey, brings this action in the public interest against DMB Financial, LLC (“DMB”), its Chief Operating Officer and owner, Daniel Kwiatek (“Kwiatek”), and DMB’s payment processor, Global Client Solutions, LLC (“Global”) (together, “Defendants”), for their numerous violations of the Massachusetts Consumer Protection Act, G.L. c. 93A (“Chapter 93A”).

**I. INTRODUCTION**

1. DMB offers a debt settlement program to financially distressed consumers who are deep in debt and struggling to pay their creditors.
2. DMB tells consumers that the company’s expert negotiators can settle their debts for less than they owe.
3. DMB directs consumers who enroll to stop communicating with their creditors and to stop paying their debts. DMB directs consumers instead to make monthly payments into dedicated “savings” accounts established and maintained by Global. DMB promises to use the

funds that accumulate in the consumers' Global savings accounts to negotiate settlements of their debts.

4. DMB has claimed that consumers who enroll in its debt settlement program can be "Debt free in 24-48 months" and that the program is affordable for consumers who enroll.

5. DMB's claims are false. A large percentage of consumers who enroll in DMB's debt settlement program fail to complete it, and many consumers drop out of the program in worse financial condition than before they enrolled.

6. The reality is that DMB enrolls consumers who it knows or should know are unlikely to complete or benefit from the program, and collects hundreds or thousands of dollars in fees in the process.

7. Worse yet, many consumers who enroll in DMB's debt settlement program are sued by their creditors, and DMB engages in the unauthorized practice of law by providing advice and services that can and should only be provided by a competent, licensed attorney.

8. Through this action, the Commonwealth seeks to permanently enjoin DMB and its co-owner and manager, Kwiatek, from operating DMB's debt settlement program in Massachusetts. The Commonwealth further seeks restitution for consumers harmed by Defendants' practices and civil penalties for their violations of Chapter 93A.

## **II. JURISDICTION, AUTHORITY, AND VENUE**

9. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4.

10. This Court has personal jurisdiction over Defendants pursuant to G.L. c. 223A, § 3.



11. Venue is proper in Suffolk County pursuant to G.L. c. 93A, § 4 and G.L. c. 223, § 5.

12. The Commonwealth notified Defendants of its intent to bring this action at least five days prior to the commencement of this action, as required by G.L. c. 93A, § 4.

### **III. THE PARTIES**

13. Plaintiff is the Commonwealth of Massachusetts, represented by its Attorney General, Maura Healey.

14. Defendant DMB Financial, LLC is a for-profit Massachusetts limited liability company with its usual and principal place of business at 500 Cummings Center, Third Floor, Beverly, MA 01915.

15. Defendant Daniel Kwiatek is one of two owners of DMB and is the Chief Operating Officer and a manager of the company. As DMB's Chief Operating Officer, Kwiatek is responsible for supervising DMB's client services, settlement, and information technology operations. At all times material to this complaint, acting alone or in concert with others, Kwiatek formulated, directed, controlled, had the authority to control, and personally participated in the acts and practices set forth in this complaint.

16. Defendant Global Client Solutions, LLC is a for-profit Oklahoma limited liability company with its usual and principal place of business at 4343 S 118th E Ave, Suite 220, Tulsa, Oklahoma 74146. Global is not registered to do business in the Commonwealth.

### **IV. FACTS**

#### **A. KWIATEK DIRECTED DMB'S DEBT SETTLEMENT PROGRAM AND PARTICIPATED IN DMB'S DAILY OPERATIONS**

17. Kwiatek founded DMB with Matthew Guthrie, based on their knowledge of the debt collection industry, following a prior venture together.

18. Among other responsibilities, Kwiatek oversees and directs DMB's settlement program.

19. As a co-founder, co-owner, and manager of DMB, Kwiatek designed, implemented, and has authority to direct DMB's operations.

20. In addition to his supervisory roles, Kwiatek is intimately involved in the day-to-day operations of DMB.

21. Kwiatek reviews, monitors and approves DMB's actions and decisions with regard to individual consumers who enroll in DMB's debt settlement program.

22. Kwiatek formulates, reviews, approves and controls the policies, practices and guidelines associated with DMB's debt settlement program, including, but not limited to, policies, practices and guidelines associated with DMB's fees, DMB's advertisements, DMB's website, DMB's debt settlement practices, and DMB's communications with consumers.

23. Kwiatek both directs and participates in DMB's daily operations.

**B. DMB'S DEBT SETTLEMENT PROGRAM**

24. DMB is a Massachusetts-based company that promises to renegotiate and settle the unsecured debts of financially distressed consumers who are struggling to pay their creditors.

25. DMB offers its debt settlement program to consumers in Massachusetts and at least 23 other States.

26. DMB claims to have served over 30,000 consumers nationwide, including thousands of Massachusetts residents.

27. DMB is not professionally licensed by any Massachusetts state agency.

### Sales & Advertising

28. DMB's debt settlement program is sold by DMB and by outside companies that DMB refers to as third-party affiliates. DMB pays the affiliates between \$250 and \$500 for referring each consumer who enrolls in its debt settlement program and makes at least one payment into the consumer's Global savings account.

29. DMB's sales staff are "expected to enroll a minimum amount of clients and a minimum amount of debt on a monthly basis."

30. DMB advertises its debt settlement program on its website, [www.dmbfinancial.com](http://www.dmbfinancial.com).

### The 2016 Website

31. As of April 4, 2016, when the Attorney General's Office issued a civil investigative demand to DMB, DMB's website (the "2016 Website") included the following representations about DMB's ability to reduce and eliminate consumers' debts:

- "We negotiate directly with your creditors to get them to forgive a portion of the debt that you owe. **Our programs are designed to have you out of debt anywhere from 12-36 months**";
- "As a matter of fact, our typical client has seen over 50% of their unsecured debt negotiated away and is debt free in as little as 36 months.\*";<sup>1</sup>
- "Debt settlement provides an alternative to bankruptcy";
- "Most people are skeptical this approach is possible. But if you have a professional debt negotiator on your team, the odds are very good that he or she can cut your debt in HALF or less"; and

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<sup>1</sup> The asterisk directed consumers to read the following text in approximately eight-point font:

\*Individual results may vary based on ability to save funds, amount of debt, willingness of creditors to negotiate, and the successful completion of all program terms. DMB's fees not included in savings disclosure. Program does not assume or pay any debts, nor provide legal or tax advice. Prudence should always be taken by consumers when reviewing contracts and disclosure materials. DMB's services not available in all states.

- “We are so confident in our ability to settle your debts that we guarantee it!”

32. The 2016 Website discouraged consumers from attempting to settle their own

debts:

- “We’re professionals, but if one of us ever got into a financial pickle, we’d never try to negotiate our own debts. Instead, we’d hire one of our colleagues to do the job for us. We can’t emphasize this enough. Just having a third-party professional on your team makes all the difference in the world. There is something almost magical about this simple approach. Once the banks realize that they are talking to a professional, someone who knows the rules and regulations, and then they quickly change their tune”;
- “A negotiator will obtain better results than you could ever obtain on your own, simply because all of the bank’s tactics are stymied by the fact that they can’t talk directly to you”; and
- “The majority of clients who leave a debt settlement program rarely succeed in solving their debt problems on their own, and remain mired in debt for many years to come.”

33. The 2016 Website also stated or implied that consumers who enroll in DMB’s

debt settlement program would improve their credit:

- “DMB doesn’t offer any quick fixes or ‘get rich quick’ schemes, but something priceless: the power to improve your credit and build a healthy financial future”;
- “Empower yourself by learning more about credit, debt settlement, and using credit responsibly”; and
- “If you’re thinking of dealing with banks directly . . . your credit score . . . [is] likely to drop another 70 to 130 points!”

#### *The 2018 Website*

34. DMB substantially altered its website after receiving the civil investigative demand from the Attorney General’s Office in 2016.

35. As of May 14, 2018, DMB’s revised website (the “2018 Website”) prominently displayed the following two graphics:



Over \$1 Billion of debt managed.



Debt free in 24-48 months



Proven success

# Over 30,000

## Consumers Out of Debt

36. The 2018 Website also included graphic illustrations of recent settlements that DMB had purportedly negotiated with creditors, including, for example, the following “post-it”-style graphic:

**CHASE  
SETTLEMENT**  


---

 Debt Owed: \$24,919  
 Settlement: \$5,233  
 Savings \$19,686  
 click to view

37. The 2018 Website told consumers that “DMB has helped more than 30,000 people just like you resolve their burdensome debt. We work directly with your creditors in your behalf to restructure how much you owe and the timeframe in which you have to pay it—all within a monthly budget you can afford.”

38. The 2018 Website also encouraged consumers to “[m]ake the smart financial decision and restructure your debt based on terms you can afford and pay less than what you currently owe. By completing our program, you could save thousands of dollars and be debt free sooner than you ever thought possible. **Now that’s a plan!**”

39. The 2018 Website did not disclose DMB’s fees or any of the negative financial consequences of enrolling in DMB’s debt settlement program.

40. Neither the 2016 Website nor the 2018 Website disclosed (1) the proportion of DMB's clients who enroll but fail to complete DMB's program; (2) how DMB calculates its fees; or (3) when DMB's fees are collected.

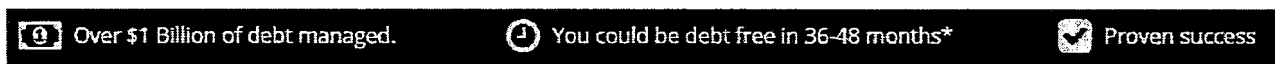
**The 2019 Website**

41. Since the commencement of this action, DMB has again altered its website (the "2019 Website").

42. DMB adopted the 2019 Website because of and as a response to the proceedings in this action.

43. The 2019 Website fails to disclose (1) the proportion of DMB's clients who enroll but fail to complete DMB's program; (2) how DMB calculates its fees; or (3) when DMB's fees are collected.

44. The 2019 Website displays the following, slightly revised graphics:



Over 30,000  
Consumers Helped

45. By means of its various website versions, DMB has represented that a consumer "could be debt free" in "12-36 months" in April 2016; in "24-48 months" in May 2018; and in "36-48 months\*" as of October 2019.

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<sup>2</sup> The asterisk in the 2019 Website does not lead to any associated disclaimer, and is the only asterisk included on the homepage of DMB's website.

46. The 2019 Website displays four or five “top results\*”<sup>3</sup> for each month since December 2018.

47. In presenting its top results, the 2019 Website discloses the “Amount Owed,” the “Settlement Amount,” and the “Client Savings Including Fee” for each result.

48. The 48 top results that DMB currently highlights on the website were settled, on average, for 27% of the debt owed, with some settled for as little as 15% of the debt owed.

49. In fact, DMB is typically able to negotiate settlements for between 40 and 60% of the debt owed.

#### **Sales Call**

50. DMB’s website directs interested consumers to call a toll-free telephone number “for a FREE, no obligation consultation.”

#### **DMB Call Script**

51. As of May 14, 2018, DMB’s call script instructed employees to tell the consumer that they will work together to “outline a budget” that will enable the consumer to repay his or her “outstanding debt in possibly as little as 24-48 months.”

52. Following the 2018 script, DMB asked the consumer to make a complete disclosure of the consumer’s financial affairs, including the consumer’s total income and assets, total indebtedness, typical monthly expenses, current employment status, and any “hardship” the consumer may be suffering.

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<sup>3</sup> The asterisk on this page leads to a fine-print disclaimer at the bottom of the page, in approximately 8-point font, which provides:

\* These are some of our top results each month. These are actual settlements for active clients. Please note that individual results and time frames will vary depending upon the total debt enrolled, monthly program payment, number of creditors enrolled in the program, and client needs. DMB Financial will always employ best practices during the settlement process to achieve results that are in the best interest of its clients.

53. DMB used this information to calculate the length of the consumer's debt settlement program and the program's monthly payment amount. The average length of the program is 42 months. The average amount of the monthly payment is hundreds or thousands of dollars.

54. DMB did not verify the balances of consumers' debts at the time of enrollment, but rather requested that consumers provide it with the "actual creditor statements" after they enroll.

**DMB's Customer Service Training Manual**

55. DMB has routinely told consumers that they will not be sued and that their credit will not suffer as a result of enrolling in its program.

56. DMB has developed scripted rebuttals to consumers' frequently asked questions.

57. If the consumer expresses concern that DMB's debt settlement program "sounds too good to be true," DMB tells the consumer that "[b]ased on your unique situation we believe that this is the program that best fits your budget and your financial situation."

58. If the consumer asks if he or she may "do this on my own?," DMB responds that "[y]ou could theoretically do any number of things on your own: Represent yourself in court, file your own tax return or fix a leaky faucet. Or, you can hire a professional in that field to make certain the job is *done right*. Since this is your financial future we're talking about, there's real comfort in that." (emphasis in original).

59. If a consumer asks if he or she may be sued by a creditor, DMB tells the consumer that collection lawsuits are rare and that "even if you do face legal collections we have a team that can settle that account, no matter the status." DMB explains that its "litigation team"



can either “get a settlement done” or “set up a monthly payment arrangement with the firm on the full balance.”

60. If a consumer asks “How much are your fees?,” DMB tells the consumer that its fees “shouldn’t be a concern” because they are included in the consumer’s monthly payment. DMB next tells the consumer that it “will not charge you ANYTHING until we actually settle your debt. So you don’t pay ANY fees until you get results, period!” DMB then explains that while its fee is “25% of your TOTAL debt,” that “works out to be about 6% per year, much lower than what you are probably paying right now, and we settle your debts for less than what you owe, that’s a great net savings for you!”

61. At no point before enrollment does DMB tell consumers the amount of money or the percentage of each outstanding debt they must save before DMB will make bona fide settlement offers to their creditors.

#### **Financial Condition of Consumers**

62. DMB does not meaningfully consider the ability of consumers to complete its debt settlement program at the time of their enrollment and the program is unaffordable for many consumers who enroll.

63. The average consumer who enrolls in DMB’s debt settlement program has tens of thousands of dollars of debt—some have more than \$100,000 in debt—and zero dollars in savings.

64. DMB frequently enrolls consumers on the basis of unrealistic budgets that allocate \$0 per month to basic necessities, including food, utilities, clothing, laundry, and personal care.

65. DMB knowingly and regularly enrolls consumers whose total income is less than their necessary expenses, or whose total income is insufficient to pay both their necessary expenses and for DMB's program.

66. Many consumers who enroll in DMB's debt settlement program are unemployed or underemployed, elderly, sick, or disabled, and/or living on a limited or fixed income.

67. DMB's debt settlement program is unaffordable for many consumers who enroll.

### **Enrollment Documents**

68. If a consumer is approved for enrollment, DMB sends the consumer a series of documents to sign, including separate contracts with DMB and Global.

69. DMB has made multiple changes to its contract with consumers since the Commonwealth initiated its investigation of the company. DMB produced three versions over time, dated, variously: August 2012, May 2017, and March 2019.

### **The August 2012 Contract**

70. The contract that DMB originally produced to the Commonwealth, "Version 8.1.12.1" (the "August 2012 Contract") is a three-page document that included sixteen (16) single-spaced paragraphs in approximately eight-point font. The front page of the contract included, in larger font: (1) the estimated length of the consumer's debt settlement program, (2) the monthly program payment, and (3) the total amount of the consumer's enrolled debt.

71. Under the August 2012 Contract, the consumer granted DMB "full power and authority" to "perform each and every act which may be necessary in connection with the attempted mediation, negotiation, and settlement" of the consumer's debts.

72. The consumer agreed "to forward all communications received from creditors directly" to DMB.

73. The August 2012 Contract did not disclose DMB's total fee, but instead typically described its "Fee Structure" as a "Per settlement fee of 25% of debt balance as determined at time of enrollment."

74. The August 2012 Contract typically stated that DMB will not collect its settlement fee until the consumer has given his or her "express consent and approval."

75. The August 2012 Contract stated that DMB will "attempt to negotiate and settle" the consumer's debts after the consumer has "saved sufficient funds" to allow DMB to make "meaningful settlement offers" to his or her creditors.

76. The August 2012 Contract did not disclose, or did not clearly and conspicuously disclose, the harms that consumers may suffer by enrolling in DMB's debt settlement program, including that their creditworthiness is likely to be impaired, that the size of their debts may increase because of the accrual of interest and fees, and that they may be sued by creditors and debt collectors.

#### **The May 2017 Contract**

77. DMB adopted a new contract, "Version 05.25.17," on or about May 25, 2017 (the "May 2017 Contract").

78. The May 2017 Contract states prominently on the first page that DMB's "fee structure" is a "per settlement fee of [25]% of the verified debt balance as determined at or near the time of enrollment."

79. The 2017 Contract also did not disclose, or did not clearly and conspicuously disclose, the harms that consumers may suffer by enrolling in DMB's debt settlement program, including that their creditworthiness is likely to be impaired, that the size of their debts may

increase because of the accrual of interest and fees, and that they may be sued by creditors and debt collectors.

**The March 2019 Contract**

80. In March 2019, after the commencement of this action, DMB once again changed its contract (the “March 2019 Contract”).

81. The March 2019 Contract is a three-page document that includes seventeen single-spaced paragraphs in approximately eight-point font. The front page of the contract includes: (1) the estimated length of the consumer’s debt settlement program, (2) the monthly program payment, (3) the total amount of the consumer’s enrolled debt, (4) the “Fee Structure,” characterized as a “Per settlement fee of [25]% of debt balance as determined at time of enrollment,” and (5) the “Total Estimated Cost of Program,” which provides that “If you remain in the Liberty Program through completion, the estimated fee you will pay is \$ \_\_\_\_.”

82. Section 9 of the March 2019 Contract, pertaining to “Fees and Program Funds,” provides:

If the balances at the time of an attempted settlement are more than 10% greater than [sic] originally represented by client, the Company may, in its sole discretion, either charge a [25]% fee on the amount of the debt at the time of an attempted settlement (as opposed to the amount of the balances represented by the client at the time of enrollment) or to terminate this Agreement.

83. The March 2019 Contract includes the following disclosure, which was not included in prior versions of DMB’s contract:

I understand that my commitment is essential for the success of this Program and settlements will not be attempted until I have saved sufficient funds in my designated Savings Account. This typically requires the client to have saved 25%-35% of the amount of debt to be settled and typically takes 3-6 months. By signing below, I/we acknowledge our approval and participation in this contract and Program.

84. DMB does not disclose in the March 2019 Contract the specific time by which DMB will make a bona fide settlement offer to each of the consumer's creditors.

85. DMB does not disclose that, when DMB collects its fee from the consumer's Global savings account, DMB frequently takes most or all of the money the consumer has saved at that time.

86. The March 2019 Contract fails to clearly and conspicuously disclose the harms that consumers may suffer by enrolling in DMB's debt settlement program, including that their creditworthiness is likely to be impaired, that the size of their debts may increase because of the accrual of interest and fees, and that they may be sued by creditors and debt collectors.

#### **Global Consumer Contract**

87. The consumer's contract with Global authorizes Global (1) to establish a savings account for the consumer, (2) to deposit funds from the consumer's primary bank account into the Global savings account, and (3) to distribute funds from the Global savings account to pay the consumer's creditors.

88. The consumer's contract with Global does not authorize Global to distribute funds from the consumer's Global savings account to pay DMB's settlement fees.

89. In exchange for its services, Global charges the consumer an account setup fee of \$9.00 and a monthly service charge of \$9.85, as well as an assortment of other fees and charges.

#### **Post-Enrollment Communications**

90. Following a consumer's enrollment into its debt settlement program, DMB works to build a relationship of "trust and confidence" with the consumer.

91. The first communication from DMB to the consumer is an "automatic email" from Kwiatek that "congratulates" the consumer on having "taken the first step toward becoming

debt free!” This email tells the consumer that DMB (1) is “honored by the trust you have placed in us and promise[s] to work diligently on your behalf!”; (2) is “confident that when all your debt is settled, you will look back and wonder why you did not enroll into our program sooner”; and (3) has “a proven methodology for addressing all of your debt with one goal in mind – to get you out of debt as quickly as it possible.”

92. DMB next emails the consumer a packet of materials that includes information about “Dealing with Collection Calls,” a “Collection Call Phone Script,” and letters with the terms of settlements purportedly negotiated by DMB. At the bottom of each letter is a graphic that shows the alleged “Original Balance,” “Settlement Amount,” and “Client Savings.” The packet contains no information about DMB’s fees.

93. DMB proceeds to communicate with the consumer through a series of scripted telephone calls. In a 24-hour call, DMB tells the consumer that it is DMB’s “intention to get you out of debt in the shortest amount of time possible.” In a call made 7 days after the consumer’s enrollment, DMB implores the consumer “to be strong and resolute in your ability to ignore the creditor calls” and “to avoid speaking with the collectors.” In a 14-day call, DMB tells the consumer that DMB understands “that dealing with these financial issues can be daunting; however, you can rest easy that we will be working diligently to eliminate your debt.” In a 21-day call, DMB informs the consumer of “the initial plan of which creditor” DMB thinks will “settle first and why.” In a 28-day call, DMB tells the consumer “to ignore all calls from the collectors” because “[t]heir only intention is to frighten you into making a minimum payment to them. The best thing is to JUST NOT TALK TO THEM! This is probably the most difficult part of the program but part of the normal process. Just keep in mind how much money you will be saving, it will make it all worth the trouble.”

94. DMB tells the consumer that it is “crucial to the success of your program that you have as little contact with your creditors as possible.”

95. DMB advises the consumer to change his or her physical mailing address and phone number to DMB’s physical mailing address and phone number.

**Authorization for Settlements**

96. DMB negotiates with creditors individually and usually begins to negotiate with a particular creditor after the consumer has saved enough money to pay DMB’s settlement fee and the savings are not needed to pay for any previously-negotiated settlements.

97. When DMB reaches a settlement with a creditor, the creditor sends DMB a letter that includes the current balance of the debt, the settlement amount (the amount the consumer must pay the creditor), the number of payments the consumer must make to the creditor, the amount of each payment, and the date of each payment. The letter does not disclose DMB’s settlement fee. The consumer does not sign the letter or any other document memorializing the terms of the settlement.

98. A settlement may require the consumer to make a lump-sum payment to the creditor or, more commonly, to make multiple payments to the creditor over a period of months or years.

99. The creditor usually is not required to forgive any portion of the consumer’s debt until the consumer makes all required payments under the terms of the settlement.

100. After receiving a letter from a creditor proposing a settlement, DMB attempts to obtain the consumer’s “verbal authorization” over the telephone.

101. Global distributes DMB’s settlement fees to DMB based on instructions received from DMB.

102. DMB does not always obtain the consumer's authorization for Global to distribute DMB's settlement fee to DMB.

### **Debt Collection Lawsuits**

103. DMB tells the consumer who asks that debt collection lawsuits are rare and that "even if you do face legal collections we have a team that can settle that account, no matter the status." DMB tells the consumer that its "litigation team" can either "get a settlement done" or "set up a monthly payment arrangement with the firm on the full balance."

104. DMB tells the consumer that it is "not looking to get any one sued" and that "creditors would rather settle than sue you for your debt" because it is "expensive and there is a low probability of the debt being collected in full."

105. In practice, many consumers who enroll in DMB's debt settlement program are sued for nonpayment of their debts – and some are sued more than once.

106. Thirty-one percent of DMB's Massachusetts consumer accounts have resulted in summons or a lawsuit.

107. DMB is not a law firm, does not employ licensed attorneys, and does not have the legal training or ability to advise consumers properly about responding to debt collection lawsuits.

108. DMB typically responds to debt collection lawsuits by calling the plaintiff creditor's law firms to inquire on what terms the plaintiffs will agree to settle the debts.

109. Unlike a competent, licensed attorney, DMB does not advise consumers as to strength of the plaintiff creditor's claims, the consumers' possible defenses or counterclaims, or whether the consumers would be better served by filing for bankruptcy instead of entering into a settlement.



110. In most cases, DMB does nothing more than ask consumers to come up with “additional funds” before a “specially trained litigation employee” (also known as a “Litigation Specialist”) attempts to negotiate settlements with the plaintiff creditors’ law firms that will result in additional fees for DMB.

#### **DMB’s Settlement Fees**

111. For each settlement it negotiates, DMB requests and receives a settlement fee that Global distributes directly from the consumer’s Global savings account to DMB.

112. DMB does not always request the consumer’s authorization before taking its settlement fee.

113. In violation of its contract with the consumer, DMB typically requests and receives a settlement fee equal to 25% of the debt at the time of settlement, rather than at the time of enrollment. This practice often has the effect of increasing DMB’s settlement fee because, as a result of DMB’s directions that consumers stop paying their creditors, the size of a debt usually increases between the time of enrollment and settlement. In some cases, the debt increases so much that the consumer pays the creditor more than the consumer owed at the time of the consumer’s enrollment in DMB’s debt settlement program.

114. In many cases, DMB requests and receives its settlement fee (or a portion thereof) before or just after the consumer makes his or her first payment to the creditor pursuant to the settlement.

115. For settlements that require the consumer to make more than one payment to the creditor, DMB often requests and receives its settlement fee (or a portion thereof) before the consumer completes making all required payments to the creditor.

116. The consumer's payment of DMB's settlement fee frequently depletes the consumer's Global savings account of nearly all the money that the consumer had saved to pay off his or her debts.

117. DMB collects its settlement fees regardless of whether the consumer becomes debt free or any debt is forgiven.

### **Examples of Consumer Experiences**

118. Based on the information DMB collects from consumers at the time of their enrollment, DMB knows or should know that many of the consumers who enroll in its debt settlement program are unlikely to complete or benefit from the program.

119. The following examples illustrate the experiences of consumers who have enrolled in DMB's debt settlement program.

#### **Example 1**

120. A consumer enrolled in DMB's debt settlement program in September 2012.

121. At the time of his enrollment, the consumer had three debts totaling almost \$45,000.

122. The consumer agreed to deposit \$634 per month for 60 months into a Global savings account.

123. In May 2013, DMB settled the consumer's first debt. Pursuant to the terms of the settlement, the consumer was required to make seventeen (17) monthly payments to his creditor. DMB obtained its full settlement fee from Global after the consumer had made only the first payment to the creditor. The consumer had \$0 in his Global savings account after paying DMB's settlement fee.

124. In June 2013, DMB settled the consumer's second debt. This time, DMB structured the settlement to require the consumer to make twenty-four (24) monthly payments to the creditor.

125. In August 2014, the consumer's third debt was placed with a law firm for collection.

126. In February 2015, the consumer informed DMB that he had been served with a summons regarding the third debt. DMB advised the consumer that his funds were "tied up." When the consumer said that he might be able to borrow money from his family, DMB responded that it would "contact the LO [Law Office] asap and be in contact with him."

127. DMB proceeded to offer the law firm "9348 over 24 pays of 389.50" to settle the debt.

128. In March 2015, the consumer told DMB that he was dropping out of his debt settlement program because he had "hit rock bottom," was "seeing a doctor for anxiety," and was filing for bankruptcy because it was the "only option he c[ould] move forward with."

### **Example 2**

129. A consumer enrolled in DMB's debt settlement program in September 2015 because she was struggling to make payments to her creditors.

130. DMB recorded that the consumer had income of \$1,000 per month and that her monthly living expenses totaled \$700.

131. As part of her debt settlement program, the consumer agreed to deposit \$735.15 per month for 48 months into a Global savings account.

132. The \$735.15 monthly deposit was more than double the \$300 that the consumer had left over each month after paying her necessary living expenses.

133. In March 2016, the consumer called DMB and they “discussed credit mac program to help her with credit score at the end of our program.” Credit Mac is a self-described “credit restoration company” that promises to delete or otherwise remove negative items from a consumer’s credit report.

134. In April 2016, DMB negotiated a settlement of the consumer’s first debt and requested and received from Global a settlement fee equal to 25% of the amount of the debt at the time of settlement.

135. In May 2016, DMB settled the consumer’s second debt. The settlement required the consumer to make twenty (20) monthly payments to her creditor. DMB obtained a settlement fee of \$2,500 from Global prior to the consumer making her first payment to the creditor.

136. One month later, in June 2016, the consumer dropped out of her debt settlement program and filed for Chapter 7 bankruptcy, reporting in her bankruptcy filing that she was unemployed and that her sole source of income was \$865 per month in social security income benefits.

137. At the time she dropped out of her debt settlement program, the consumer had paid almost 80% of the money that she had deposited into her Global savings account to DMB; had paid approximately three times more in fees to DMB than she had paid to her creditors; and her total debt had increased by more than \$3,000.

### **Example 3**

138. A consumer enrolled in DMB’s debt settlement program in October 2015 because a “work slow down [sic] and kids [sic] educational expenses made it difficult to keep up on payments.”

139. The consumer agreed to deposit \$541.06 per month for 48 months into a Global savings account.

140. According to DMB's records, in November 2015, the consumer complained to DMB that she had been told that "all settlements" would be "setup [*sic*] in 90 days" and that "she felt lied too [*sic*]."

141. In December 2015, DMB attempted to settle one of the consumer's debts, but was told the debt could not be settled because the account was "only 14 days past due."

142. The consumer was sued three times while enrolled in her debt settlement program – twice by the debt collection law firm Lustig, Glaser & Wilson, P.C. ("Lustig") and once by the debt collection law firm Zwicker & Associates, P.C. ("Zwicker").

143. Lustig filed the first lawsuit in June 2016. In response to Lustig's offer to dismiss the lawsuit for \$1,200, DMB offered to settle the debt for \$1,100. After Lustig refused, the consumer paid Lustig the \$1,200 that Lustig had previously demanded. Nevertheless, a default judgment entered against the consumer because she had failed to appear at the hearing for the case.

144. Lustig filed the second lawsuit in August 2016. In response, DMB and Lustig negotiated a settlement that required the consumer to make eight (8) monthly payments to the creditor. Despite making all eight (8) payments, a judgment subsequently entered against the consumer for failing to respond to interrogatories.

145. The third lawsuit was filed by Zwicker on August 2016. In response to the lawsuit, DMB and Zwicker negotiated a settlement that required the consumer to make a single lump-sum payment. The consumer did not have funds in her Global savings account to pay for this settlement, and thus had to deposit additional funds into her Global savings account.

**V. VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION ACT**

146. The Massachusetts Consumer Protection Act prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” G.L. c. 93A, § 2(a).

147. Whether an act or practice is unfair largely depends “on the nature of [the] challenged conduct and on the purpose and effect of that conduct.” *Massachusetts Employee Ins. Exch. v. Propac-Mass, Inc.*, 420 Mass. 39, 42-43 (1995) (describing these as the “crucial factors”). Courts traditionally assess (1) whether the practice is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; and (3) whether it causes substantial injury to consumers (or competitors or other businessmen). See *PMP Assocs., Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975).

148. An act or practice is “deceptive” if it has the “capacity to mislead consumers, acting reasonably under the circumstances, to act differently from the way they otherwise would have acted.” *Aspinall v. Phillip Morris Companies, Inc.*, 442 Mass. 381, 394 (2004).

**COUNT 1**

149. The foregoing paragraphs are re-alleged and incorporated herein by reference.

150. By carrying out the scheme described above, DMB and Kwiatek have engaged in unfair and deceptive acts and practices in violation of G.L. c. 93A, § 2(a).

151. These unfair and deceptive acts and practices include, but are not limited to, the following:

- A. Making false, misleading, and unsubstantiated claims about DMB’s ability to reduce, settle, and eliminate a consumer’s debts;

- B. Misleadingly advertising only DMB's top settlement results on its current website rather than results that are representative of the full population of DMB's settlements;
- C. Representing, directly or by implication, that enrollment in DMB's debt settlement program will improve a consumer's creditworthiness;
- D. Failing to inform prospective enrollees of the large percentage of enrolled consumers who fail to complete or benefit from DMB's debt settlement program;
- E. Failing to inform consumers of the time by which DMB will make a bona fide settlement offer to each of a consumer's creditors;
- F. Failing to inform consumers of the amount of money or the percentage of each outstanding debt that the consumer will need to accumulate before DMB will make a bona fide settlement offer to each of the consumer's creditors;
- G. Failing to adequately disclose the harms that consumers suffer by enrolling in DMB's debt settlement program;
- H. Failing to meaningfully consider consumers' ability to complete or benefit from DMB's debt settlement program at the time of their enrollment;
- I. Enrolling consumers in DMB's debt settlement program who DMB knew or should have known were unlikely to complete the program;
- J. Directing consumers to stop communicating with and making payments to their creditors;
- K. Requesting and receiving settlement fees without obtaining consumers' authorization;

- L. Requesting and receiving settlement fees based on the amount of debts at the time of settlement rather than the time of consumers' enrollment in DMB's debt settlement program;
- M. Requesting and receiving settlement fees prior to consumers making a first payment to creditors pursuant to settlements negotiated by DMB;
- N. Requesting and receiving settlement fees regardless of whether consumers achieve any reduction in debt pursuant to a settlement negotiated by DMB;
- O. Advising consumers who have been sued for nonpayment of their debts; and
- P. Negotiating settlements with the creditors of consumers who have been sued for nonpayment of their debts.

152. Defendants DMB and Daniel Kwiatek knew or should have known that these unfair and deceptive acts and practices violate G.L. c. 93A, § 2(a).

## COUNT 2

153. The foregoing paragraphs are re-alleged and incorporated herein by reference.

154. General laws c. 221, § 46C, provides that “[t]he furnishing of advice or services for and in behalf of a debtor in connection with any debt pooling plan, whereby such debtor deposits any funds for the purposes of making pro rata payments or other distributions to his creditors, shall be deemed to be the practice of law.”

155. Here, DMB, with the knowledge and/or at the direction of Daniel Kwiatek, engages in the practice of law in violation G.L. c. 221, §§ 46 and 46C, by furnishing advice and services in connection with a program whereby consumers deposit funds for the purpose of making distributions of the funds to their creditors. See *Home Budget Service, Inc. v. Boston Bar Ass'n*, 335 Mass. 228, 233 (1957); see also *In the Matter of Hrones*, 457 Mass. 844, 849-850



(2010), quoting *Matter of an Application for Admission to the Bar of the Commonwealth*, 443 Mass. 1010, 1012 n.4 (2005) (at a minimum, “the practice of law includes: “directing and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and to act upon opinions as to what those rights are and as to the legal methods which must be adopted to enforce them, the practice of giving or furnishing legal advice as to such rights and methods and the practice, as an occupation, of drafting documents by which such rights are created, modified, surrendered or secured”).

156. DMB and Kwiatek knew or should have known that furnishing advice or services in connection with such a program violates G.L. c. 93A, § 2(a).

### **COUNT 3**

157. The foregoing paragraphs are re-alleged and incorporated herein by reference.

158. Global has engaged in unfair and deceptive acts and practices in violation of G.L. c. 93A, § 2(a) by, among other things, (1) distributing settlement fees to DMB without obtaining authorization from consumers; (2) distributing settlement fees to DMB in advance of consumers having made at least one payment pursuant to settlements negotiated by DMB; and (3) distributing settlement fees to DMB based on the amounts of consumers’ debts at the time of settlement rather than enrollment.

159. Through these unfair and deceptive acts and practices, Global provided substantial assistance or support to DMB when Global knew or consciously avoided knowing of each of the unfair and deceptive acts and practices described in Counts 1 and 2.

160. Global knew or should have known that each of these acts and practices violate G.L. c. 93A, § 2(a).

**RELIEF REQUESTED**

**WHEREFORE**, the Commonwealth requests that this Court enter judgment against Defendants and:

1. Permanently enjoin Defendants from furnishing advice or services in connection with DMB's debt settlement program;
2. Order Defendants to refund to consumers all fees consumers paid DMB and Global in connection with DMB's debt settlement program, including all settlement fees collected by DMB;
3. Order Defendants to refund to consumers all money consumers paid creditors pursuant to settlements negotiated by DMB that did not result in forgiveness of debt;
4. Order Defendants to pay civil penalties of \$5,000 per violation of G.L. c. 93A, § 2(a);
5. Order Defendants to pay the Commonwealth's attorneys' fees and all costs incurred in connection with the investigation and litigation of this action; and
6. Award additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS  
MAURA HEALEY  
ATTORNEY GENERAL

/s/ Max Weinstein

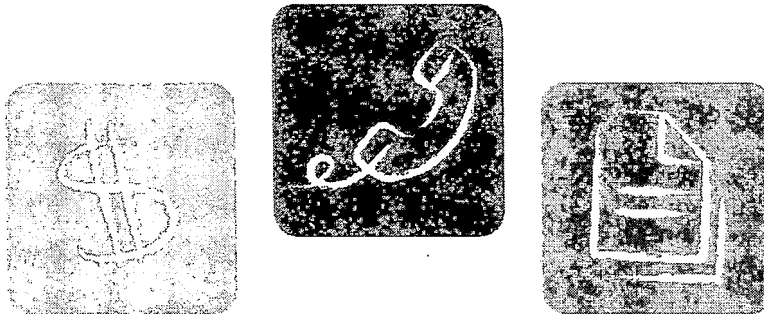
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Date: October 22, 2019

# **EXHIBIT B**

**DEBT RELIEF  
SERVICES & THE  
TELEMARKETING  
SALES RULE:  
A GUIDE FOR BUSINESS**



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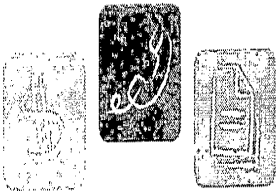
FEDERAL TRADE COMMISSION | [FTC.GOV](https://www.ftc.gov)



Many Americans struggle to pay their credit card bills. Some turn to businesses offering “debt relief services” – for-profit companies that say they can renegotiate what consumers owe or get their interest rates reduced.

The Federal Trade Commission (FTC), the nation’s consumer protection agency, has amended the Telemarketing Sales Rule (TSR) to add specific provisions to curb deceptive and abusive practices associated with debt relief services. One key change is that many more businesses will now be subject to the TSR. Debt relief companies that use telemarketing to contact potential customers or hire someone to call people on their behalf have always been covered by the TSR. The new Rule expands the scope to cover not only outbound calls – calls you place to potential customers – but in-bound calls as well – calls they place to you in response to advertisements and other solicitations. If your business is involved in debt relief services, here are three key principles of the new Rule:

- **It’s illegal to charge upfront fees.** You can’t collect any fees from a customer before you have settled or otherwise resolved the consumer’s debts. If you renegotiate a customer’s debts one after the other, you can collect a fee for each debt you’ve renegotiated, but you can’t front-load payments. You can require customers to set aside money in a dedicated account for your fees and for payments to creditors and debt collectors, but the new Rule places restrictions on those accounts to make sure customers are protected.
- **You have to disclose certain information before signing people up for your services.** Before people sign up, you must disclose fundamental aspects of your services, including how long it will take for them to get results, how much it will cost, the negative consequences that could result from using debt relief services, and key information about dedicated accounts, if you use them.



- **You can't misrepresent your services.** The new Rule prohibits you from making false or unsubstantiated claims about your services.

Is your business covered by the new Rule? Are you certain of your legal obligations? This Guide tells you how to comply with the new Rule and is designed to supplement the FTC's publication, *Complying with the Telemarketing Sales Rule*. The Guide represents the views of FTC staff and is not binding on the Commission.

## WHO'S COVERED BY THE NEW RULE

The new Rule applies to for-profit sellers of debt relief services and telemarketers for debt relief companies. The new Rule defines a "debt relief service" as a program that claims directly, or implies, that it can renegotiate, settle, or in some way change the terms of a person's debt to an unsecured creditor or debt collector. That includes reducing the balance, interest rates or fees a person owes. The TSR defines "telemarketing" as a "plan, program, or campaign . . . to induce the purchase of goods or services" involving more than one interstate telephone call. Most of the provisions of the TSR apply to sellers and telemarketers, so the terms "company" and "provider" in this Guide refer to both. In addition, certain parts of the Rule apply to those who provide substantial assistance or support to sellers or telemarketers.

Some examples of debt relief services include:

- ▶ **Debt settlement** – Companies that say they can settle customers' debts for less than the full balance.

*Example 1:* Company A advertises a program to help people settle their credit card debts for less than what they owe. It requires customers to set aside monthly payments

as savings. Company A waits until there is enough money in the account to make an offer to the creditor or debt collector. It negotiates an offer from the creditor or debt collector to settle the debt and gets the customer's approval. The customer pays the reduced amount to settle the debt. Company A is covered by the new Rule.

## I operate a non-profit organization. Does the new Rule apply to us?

Bona fide non-profit organizations aren't covered because the TSR applies only to for-profit companies. However, the Rule covers companies that falsely claim nonprofit status.

- ▶ **Debt negotiation** – Companies that say they can reduce their customers' monthly payments by getting creditors to reduce interest rates or agree to other concessions.

*Example 2:* Company B says it can reduce customers' credit card debt or monthly payments by negotiating with credit card companies to get a lower interest rate. After a person signs up for the program, Company B calls the credit card company – sometimes with the customer on the line – and asks for concessions. Company B is covered by the new Rule.

*Example 3:* Company C says it can reduce customers' credit card debt or monthly payments by negotiating with credit card companies to get a lower interest rate. When people sign up for the program, Company C gives them a payment schedule with accelerated payments, claiming it

only promised to “show” customers how they could save money. Company C is covered by the new Rule.

- ▶ **Credit counseling** – Companies that work as a liaison between customers and their creditors to negotiate and administer a monthly payment plan (often called a “debt management plan”) that makes it more manageable for a customer to repay the debt – for example, by lowering interest rates or forgiving late fees

*Example 4:* Company D says it can consolidate customers’ multiple credit card payments into a lower single monthly payment. When a person signs up for the program, Company D works with creditors and secures an agreement to a debt management plan on behalf of the customer. As part of that plan, the customer agrees to make monthly payments to each creditor, and the creditors agree to reduce the customer’s interest rates or make other concessions so that the payment is more manageable. Company D administers the customer’s monthly payments. The customer sends the payment to Company D, which then sends the payments to each of the customer’s credit card companies. Company D is covered by the new Rule.

Even if you don’t directly sell or provide debt relief services, you may have obligations under the new Rule. Specifically, it’s illegal to provide “substantial assistance” to another company if you know they’re violating the Rule or if you remain deliberately ignorant of their actions. What amounts to substantial assistance depends on the facts. In the context of debt relief services, substantial assistance may include:

- obtaining and selling leads – the contact information of potential customers – to other companies;

- helping a debt relief company with its back-room operations, for example, by reviewing customer files, processing customers’ payments or contacting customers’ creditors once they’ve signed up; or
- offering dedicated accounts to customers where they set aside the debt relief provider’s fees and funds for payments to creditors or debt collectors (more about that on page 16).

If you work with debt relief companies, review their policies, procedures and operations to make sure they’re complying with the Rule. Willful ignorance isn’t a defense.

### **I’m an attorney and I provide debt relief services. Am I covered by the new Rule?**

There’s no general exemption from the TSR for attorneys who engage in telemarketing. However, most attorneys are likely to fall outside the Rule for at least two reasons. First, the TSR applies only to providers who use interstate telemarketing. Second, providers – including attorneys – who meet face-to-face with their customers before signing them up are likely exempt from most of the Rule’s provisions. Read *Complying with the Telemarketing Sales Rule* to see if the face-to-face exemption applies to you.

### **TYPES OF TELEMARKETING CALLS COVERED BY THE NEW RULE**

The Telemarketing Sales Rule has covered a wide variety of telemarketing transactions since it was enacted in 1995, including the sale of credit repair services, products with a negative option feature, prize promotions and advance fee loans. Debt



relief companies that initiate calls to potential customers or hire others to call people for them have always been covered by the TSR. The new Rule expands the scope of the TSR to cover many debt relief services in-bound calls (calls potential customers place to you or someone working on your behalf), in addition to outbound calls (calls you or someone who works for you place to potential customers). Here are some examples of the kinds of calls covered by the new Rule:

- ▶ **Calls to you in response to advertising** – consumer calls in response to TV or radio commercials; infomercials; home shopping programs; ads in magazines, newspapers or the phone book; online ads; billboards; or ads in other media.
- ▶ **Calls to you in response to most direct mail promotions** – consumer calls in response to postcards, flyers, door hangers, brochures, “certificates,” letters, email, faxes, etc., urging people to call about debt relief services.

*Example 5:* Company E runs ads on TV, radio, websites and billboards to market its program to settle consumers’ credit card debt for less than what they owe. The ads feature a number to call for more information. The new Rule covers those calls and any transactions resulting from them.

*Example 6:* Company F mails a letter saying it can get people lower interest rates from their credit card companies. The letter encourages recipients to call to learn more about the service. The new Rule covers those calls and any transactions resulting from them.

Companies selling debt relief services and people working on their behalf are subject to all of the existing restrictions of the TSR – including, for example, the Do Not Call provisions of

the Rule. Additionally, all of the existing exemptions from the TSR apply. For example, businesses – including debt relief service companies – that meet with their customers face-to-face before signing them up for their services are exempt from the TSR. Read *Complying with the Telemarketing Sales Rule* to find out more.

**My company helps customers settle debts that aren’t necessarily credit card debts. Does the new Rule apply to us?**

The definition of “debt relief service” covers all types of unsecured debts. If the other debts you settle are unsecured – for example, medical debts – you’re covered by the new Rule. Services promising relief from mortgage debt are not covered under the TSR. They’re the subject of a separate FTC Rulemaking on Mortgage Assistance Relief Services (MARS). Visit [www.ftc.gov](http://www.ftc.gov).

## INFORMATION YOU MUST DISCLOSE TO CUSTOMERS

If you provide debt relief services, the new Rule lays out several key pieces of information you must disclose both truthfully and clearly and conspicuously – either orally or in writing – before people sign up for your services. The “clear and conspicuous” standard means that information must be presented in a way that average consumers would notice and understand. Burying required disclosures in a lengthy fine-print contract, disclosing them in a hard-to-read block of text, or including them in a rapid-fire oral presentation isn’t sufficient to meet the standard. The Rule isn’t specific about type sizes, and it gives some flexibility on how to convey the information, but it’s very clear that you must communicate certain disclosures as effectively as

you communicate your sales message. Read *Complying with the Telemarketing Sales Rule* for more on how to make your disclosures clear and conspicuous.

Under the existing disclosure requirements of the TSR – which now apply to your in-bound calls – and a new provision of the Rule, you must disclose key facts to consumers, including:

1. **How much your service costs and other important terms.** Before someone signs up for your service, you must disclose all fees. If you charge a specific dollar amount, you must disclose that amount. If you charge a percentage of the amount a customer would save as a result of your program, you have to disclose both the percentage and the estimated dollar amount it represents for that customer. In addition, before someone signs up, you must disclose any material restrictions, limitations, or conditions on your services. If the sales presentation includes a statement about your company's refund policy, you must also include a clear and conspicuous disclosure of all terms and conditions of the policy. If you don't give refunds, the Rule requires you to tell people that before they sign up for your service.

*Example 7:* A debt settlement company, Company G, charges a service fee of 10% of any debt reduction it gets for its customers. Adam signs up for the program with a single credit card debt of \$5,000. Based on its experience with that credit card company, Company G estimates it can settle Adam's debt for \$3,000 – a reduction of \$2,000. Under the new Rule, before Adam signs up for the program, Company G must disclose that it will charge him 10% of the amount of debt reduction, or an estimated \$200 (10% of \$2,000).

2. **How long it will take to get the advertised results.** You must tell your customers how long it will take for them to get the results you represent. For example, if your service includes debt settlement, you must give a good faith estimate of how many months or years the customer will have to wait before you'll make an offer to each creditor that's likely to result in a settlement. You have to have a reasonable basis for any statements you make – for example, you can base your estimates on your experience with previous customers. Be precise: If you have experience with certain creditors, your estimate must reflect that experience. Your estimate should take into account the circumstances of each customer, and the results achieved by customers in similar circumstances.
3. **How much money a customer must save before you'll make a settlement offer to creditors.** You must tell potential customers how much money or what percentage of each outstanding debt they must accumulate before you'll make an offer to each creditor that's likely to result in a settlement. If you're estimating, you must have a reasonable basis for your estimate. For example, if someone owes \$10,000 to a creditor and your data shows that this creditor is likely to settle the debt for \$6,000, you must tell the potential customer before he or she signs for your program that he or she will have to save about \$6,000 to settle the debt.
4. **The consequences if the customer fails to make timely payments.** If you ask your customers to stop making timely payments to their creditors – or if your program relies on that practice – you must tell them about the possible consequences of doing so, including:
  - damage to their credit report and credit score;
  - that creditors may sue them or continue with the collections process; and

- that they may accrue new fees and interest, which will increase the amount they owe.

5. **The customer's rights regarding dedicated accounts.** If you ask or require your customers to set aside funds, first you must make sure the funds are in an account at an insured financial institution. Next, you must disclose that:

- the customer owns the funds held in the account;
- the customer may withdraw from your service at any time without penalty; and
- if the customer decides to withdraw from your service, he or she will get back all the money in the account other than fees you earned in compliance with the TSR.

## MAKING TRUTHFUL AND SUBSTANTIATED CLAIMS

If you provide debt relief services, it's illegal to misrepresent any material aspect of your services, either explicitly or by implication. A material aspect of a debt relief service includes any information that is likely to affect someone's decision to sign up for your program or to choose one program over another. Some examples of claims that would be material:

- the amount of money or the percentage of the debt someone may save by using your service;
- the amount of time necessary to get the results you represent;
- the amount of money or the percentage of each outstanding debt the customer must accumulate before you'll begin your attempts to negotiate, settle, or modify the terms with creditors;

- the amount of money or the percentage of each outstanding debt the customer must accumulate before you'll make a bona fide offer to negotiate, settle, or modify the terms with creditors;
- the effect of your service on the customer's creditworthiness;
- the effect of your service on the collection efforts of any creditors or debt collectors;
- the percentage or number of customers who have gotten the results you represent; and
- whether your business is a bona fide nonprofit entity.

### May I base my advertising claims on the experiences of some previous customers?

Yes, but your sample must be representative of the entire relevant population of your past customers. To accomplish this you must, among other things, use appropriate sampling techniques, proper statistical analysis, and safeguards for reducing bias and random error. You can't cherry-pick the most successful examples to inflate your results.

If you advertise or represent that your customers will save a certain amount of money or reduce their debt by a certain percentage – for example, “We can settle your debts for 40% to 60%” – your statements must be truthful, and you must have objective proof to back them up. Your claims must accurately reflect the results you've achieved for previous customers. It's important to consider the message your claims convey. Under the law, the FTC looks at claims from the point of view of reasonable consumers. Therefore, what matters isn't the literal accuracy of the words you use, but rather your proof to support

the “net impression” your message conveys. For example, claiming that your past customers have achieved “up to 60% savings” is likely to convey to new customers that they, too, will get savings of around 60%. If you don’t have solid proof to back that up, the claim is deceptive.

Here are several important requirements for making sure your savings claims are truthful and not deceptive:

1. **State the savings based on the customer’s debt when he or she signs up for the program.** You may not inflate savings figures or percentages by including interest and fees the credit card company adds after a customer signs up for your program.

*Example 8:* Andy signs up with a debt relief service offered by Company H, owing \$10,000 on his credit card. One year later, following negotiations with the credit card company, Company H negotiates a settlement allowing Andy to pay \$6,000 to resolve the debt. However, since Andy enrolled, the credit card company has charged him interest and late fees totaling \$2,000, so that Andy now owes \$12,000. By getting a settlement for \$6,000, Company H has saved Andy \$4,000 (\$10,000 minus \$6,000) or 40% of the debt at the time of enrollment. It would be deceptive for Company H to claim to have saved Andy \$6,000 (\$12,000 minus \$6,000) or 50% of his debt.

2. **Include the impact of your fees on the claimed savings.** You may not inflate your savings claims by excluding the fees your customers paid you.

*Example 9:* Betty owes \$10,000 on her credit card, and signs up with Company J’s debt relief service. Company J gets a settlement allowing Betty to pay \$5,000 to resolve the debt. However, at the time of settlement, Company J charges Betty a \$1,000 fee for its work. It would be

deceptive for Company J to claim to have saved Betty \$5,000 – or 50% of her debt – because Betty also had to pay \$1,000 in fees. Instead, Company J may truthfully state Betty’s savings as \$4,000 (\$5,000 minus \$1,000) or 40% of Betty’s debt.

3. **In calculating the results you’ve achieved over time, you must include customers who dropped out or otherwise failed to complete the program.** Don’t base your savings claims only on customers who successfully completed your program.

*Example 10:* Company K had 10 customers signed up for its service. Each one had \$10,000 in unpaid credit card debt for a total of \$100,000. Five of the customers completed the program, and each saved \$5,000 – for a total savings of \$25,000. The remaining five customers dropped out of the program, each one still owing the \$10,000 they owed when they signed up with the program. Taken together, Company K has saved its customers \$25,000 – or 25% – of the total \$100,000 debt they had when they signed up with the program. It would be deceptive for Company K to exclude the drop-outs and claim that it saved its customers 50% of their debt.

4. **Include all debts enrolled by your customers, not only those that have been settled successfully.** In calculating your savings claim, you may not exclude accounts you failed to settle, even if the failure was due to customers dropping out of your service.

*Example 11:* Company L has 10 customers, and each of them enrolls two \$1,000 debts in the program – totaling 20 debts or \$20,000. Company L is able to settle 10 of the 20 debts, each for \$500. However, it was unable to settle the remaining 10 debts before those customers

either completed or dropped out of the program. Thus, Company L has saved its 10 customers \$5,000 or 25% of their debts in the program. It would be deceptive for Company L to exclude the 10 accounts that weren't settled and claim a savings rate of 50%.

## COLLECTING FEES

If you provide debt relief services, the new Rule says you can't collect any fee from a customer until you meet these three requirements:

1. **You must have reached a successful result for your customer.** You must have renegotiated, settled, reduced, or otherwise changed the terms of at least one of the customer's debts.
2. **There must be an agreement between your customer and the creditor.** Your customer must agree to the settlement agreement, debt management plan, or other result reached with the creditor due to your service. According to the Rule, the agreement from the creditor must be in writing, although your customer may agree to it orally. You can't take your fee in advance by getting your customer to agree to a blanket "pre-approval" of any settlement you might be able to negotiate in the future.
3. **Your customer must have made a payment to the creditor.** Your customer must have made at least one payment to the creditor or debt collector as a result of the agreement you negotiated.

It is illegal to front-load your fees. If your customer has multiple debts enrolled in your program and you've settled one of them, you may collect a *portion* of your full fee – as long as you also have completed the three required steps in connection with

that debt. The new Rule gives you two options for calculating your fee if your customer has enrolled multiple debts:

- ▶ **Alternative 1: Proportional fee.** According to the Rule, your fee must "bear[] the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount." The "individual debt amount" and the "entire debt amount" refer to what your customer owed at the time her or she enrolled the debt in the service. So if you settle a proportion of a customer's total debt enrolled with you, you may get that same proportion of your total fee.

*Example 12:* Company M enters a contract with Alex to settle his debts. When Alex enrolls, he owes three separate \$1,000 debts in the program for a total of \$3,000. The contract states that Company M will charge Alex a total fee of \$600. Six months after Alex enters the program, Company M settles one of his debts. Alex signs an agreement with the creditor and pays the settlement amount. In this example, Company M now may charge Alex a \$200 fee – one-third of its total fee – because the company settled one-third of his total debt.

- ▶ **Alternative 2: Percentage of Savings.** If you base your fee on a percentage of what your customer saved as a result of your service (often called a contingency fee), the percentage you charge must be the same for each of a customer's debts. Further, the amount saved must be based on the difference between the amount of debt enrolled in the program and the amount of money required to satisfy the debt.

*Example 13:* Company N enters a contract with Barbara to settle her debts. She enrolls three separate \$1,000 debts

in the program for a total of \$3,000. Company N clearly and conspicuously discloses to Barbara that its fee will be 25% of the savings achieved by using its service. Six months after entering the program, Company N settles one of Barbara's debts for \$600 – saving her \$400 of the \$1,000 she owed on that account. Barbara signs an agreement with the creditor and pays the settlement amount. Company N may collect a fee of \$100 – 25% of the \$400 Barbara saved.

## REQUIRING A DEDICATED ACCOUNT

Under the new Rule, you may require your customers to set aside your fee and funds to pay debts in a dedicated account as long as:

- the account is held at an insured financial institution;
- the customer owns the funds (including any interest accrued), controls them, and can withdraw them at any time;
- you don't own or control the company administering the account or have any affiliation with it;
- you don't split fees with the company administering the account; and
- the customer can stop working with you at any time without penalty. If the customer decides to end the relationship with you, you must return the money in the account to the customer within seven business days (minus any fees you've earned from the account in compliance with the TSR).

The independent company that administers the account may charge the customer a reasonable fee, but it may not transfer any of the customer's funds to you – directly or indirectly

– until you have renegotiated, settled, reduced, or otherwise changed the terms of at least one of your customer's debts and met all the related requirements in the Rule.

It's illegal to provide "substantial assistance" to another company if you know they're violating the Rule or if you remain deliberately ignorant of their actions. To avoid liability for facilitating violations of the new Rule, companies that administer dedicated accounts should review the policies, procedures, and operations of the debt relief providers to ensure they're complying with the advance fee ban provision of the Rule, including the provision relating to dedicated accounts. As they continue to administer dedicated accounts, companies also should investigate consumer complaints and disputed payments. Some companies administering dedicated accounts may not be subject to the FTC's jurisdiction, but laws enforced by other government agencies may apply to them.

## KEEPING RECORDS

Under the new Rule, any debt settlement, debt management plan or other debt resolution plan from a creditor must be in writing. You must keep these documents for at least two years. The type of documentation depends on the services you provide. Examples of acceptable documentation include:

- **For credit counseling** – a debt management plan containing the new terms binding on all applicable creditors and debt collectors, with evidence that the customer has made the first payment.
- **For debt settlement** – a letter or receipt from the creditor or debt collector stating that the debt has been satisfied and the amount of the payment received, or other documentation that contains a specific settlement offer from the creditor or debt collector and evidence of a corresponding payment to the creditor or debt collector.

- ▶ **For debt negotiation** – a written document from a creditor or debt collector stating that it has agreed to a concession – for example, a lower interest rate for a credit card – with evidence that the customer has made at least one payment under the new terms.

You have to retain documentation of all fees you collected from each customer. It's a good practice to give them copies of all paperwork as well.

Savvy businesses know that it's best to get a customer's written approval for all debt settlements. The new Rule recognizes there might be an exceptional case when a customer's oral agreement will have to suffice – for example, if a creditor offers a very favorable settlement available only for a limited time. But oral agreements should rarely be used. Indeed, members of the debt settlement industry should be careful not to pressure customers to act without taking time to think over their decision. Keep in mind that it's risky to rely solely on oral communications. If you get a customer's oral agreement, it's wise to write a note to that effect, keep it on file with the creditor's written agreement, and follow up in writing with your customer.

## BEST PRACTICES

In addition to adhering to the basic compliance requirements of the new Rule, providers of debt relief services may want to incorporate other practices to help their customers:

- ▶ **Screen prospective customers for suitability.** Debt relief programs aren't right for everyone. For example, some people may have so many debts and so few assets that filing for bankruptcy is their best option. Set up reasonable written procedures to ensure that each customer is suitable for your program. What's reasonable may depend on the

type of service you offer and the results you promise. The bottom line is that you should have good reason to believe that the people you sign up are capable of making the payments associated with your program and are likely to complete it successfully, based on their situation when they sign up with you. Train and supervise your employees to make sure they're following your procedures. Particularly if you pay your sales staff a commission based on how many people they sign up for your program, monitor them carefully to make sure they don't misrepresent the service to potential customers. Review and update your procedures periodically.

- ▶ **Keep your customers in the loop.** Update your customers on the status of your negotiations and progress – including any important communications from their creditors. Tell them about any changes in their creditors' policies that may affect how long the process will take or how much money it will take to settle their debts.
- ▶ **Let customers communicate with creditors.** You should allow your customers to contact – and be contacted by – their creditors.
- ▶ **Tell customers about the tax consequences of the program.** For some people, using debt relief services could have tax consequences. Depending on the customer's financial condition, the amount of savings can be considered income. Make sure your customers are aware of the possible tax ramifications of using your services.
- ▶ **Make sure your employees are complying with the Rule.** Be sure to train and monitor them carefully to ensure they do not misrepresent your services to consumers. This is especially important if you pay your sales people on commission, based on how many customers they sign up.

## LOOKING FOR MORE INFORMATION ON DEBT RELIEF SERVICES AND THE TSR?

- Telemarketing Sales Rule  
([www.ftc.gov/os/2010/07/R411001finalrule.pdf](http://www.ftc.gov/os/2010/07/R411001finalrule.pdf))
- Telemarketing and Consumer Fraud and Abuse Prevention Act  
([www.law.cornell.edu/uscode/15/ch87.html](http://www.law.cornell.edu/uscode/15/ch87.html))
- Settling Your Credit Card Debts  
([www.ftc.gov/bcp/edu/pubs/consumer/credit/cre02.shtml](http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre02.shtml))
- Credit Card Interest Rate Reduction Scams  
([www.ftc.gov/bcp/edu/pubs/consumer/alerts/alr178.shtml](http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alr178.shtml))
- Complying with the Telemarketing Sales Rule  
([www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.shtml](http://www.ftc.gov/bcp/edu/pubs/business/marketing/bus27.shtml))
- Knee Deep in Debt  
([www.ftc.gov/bcp/edu/pubs/consumer/credit/cre19.shtml](http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre19.shtml))
- Questions about debt relief services and the TSR?  
Contact:

Division of Financial Practices  
Bureau of Consumer Protection  
Federal Trade Commission  
Washington, DC 20580  
(202) 326-3224

## ABOUT THE FTC

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair practices in the marketplace and to provide information to businesses to help them comply with the law. To file a complaint or to get free information on consumer issues, visit [ftc.gov](http://ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. Watch a new video, *How to File a Complaint*, at [www.ftc.gov/video](http://www.ftc.gov/video) to learn more. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

## OPPORTUNITY TO COMMENT

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).







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# **EXHIBIT C**

**You are receiving this information because you may have been sued by a debt collector.** This document is meant to provide resources in the event that you are sued. If you are being sued, it is important to act quickly.

#### IF YOU HAVE A COURT DATE

- **Do not miss your court date.** If you do not show up, the court may decide the case against you, or in some cases may issue a warrant to require you to attend a future court date.
- If you cannot afford to pay a debt, let the court know. Certain types of income such as Unemployment Benefits, Workers Compensation Benefits, and Social Security Benefits are exempt from payment orders.

#### RESOURCES

- Massachusetts Attorney General's Consumer Advocacy and Response Division's hotline at: (617)-727-8400, or online at <https://www.mass.gov/get-consumer-support>.
- You can also learn more about fair debt collection in Massachusetts at: <https://www.mass.gov/service-details/fair-debt-collection>.

#### LEGAL RESOURCES

- If you selected to pay a monthly fee to Arnold & Smith ("A&S") Law at the time of your enrollment with DMB, you may be entitled to legal representation by A&S Law. To ensure that you are able to receive such representation, please notify A&S Law if you are sued by a debt collector **as soon as possible**. You can reach A&S Law at (405) 673-7850, or by email at: [info@arnoldsmithlawfirm.com](mailto:info@arnoldsmithlawfirm.com).
- If you would like assistance from an attorney, you may contact the Massachusetts Bar Association Lawyer Referral Service at: <https://www.masslawhelp.com/> or 1-800-552-7046. You could also contact your local bar association's lawyer referral service.
- Information about free or low-cost legal help is also available at: [www.masslegalhelp.org](http://www.masslegalhelp.org) or [www.masslegalservices.org](http://www.masslegalservices.org).
- If you live in the Greater Boston Area, you may also reach out to Greater Boston Legal Services at: [www.gbls.org/](http://www.gbls.org/) or (617)-603-1671.
- If you live outside of the Greater Boston Area, you can find a local/regional resource list at: [www.mass.gov/service-details/finding-legal-help](https://www.mass.gov/service-details/finding-legal-help).

#### BANKRUPTCY RESOURCES

- If you have multiple debts and can't get caught up, you may wish to learn more about personal bankruptcy. Information about filing bankruptcy, including information about the Court's "Pro Se" Bankruptcy Clinic (for those without a lawyer) is available for free from the Bankruptcy Court's website, at: <http://www.mab.uscourts.gov/mab/>