

**No. D-1-GV-09-001570**

STATE OF TEXAS, Plaintiff,	§	IN THE DISTRICT COURT OF
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
DEBT RELIEF USA, INC., Defendant.	§	53 <sup>RD</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this date, came for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (hereinafter “Plaintiff” or “State”), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and DEBT RELIEF USA, INC. (hereinafter “Defendant,” “Debt Relief USA,” or “Debtor”) is Defendant. Robert Newhouse is the Chapter 7 Trustee of the Debtor (the “Trustee”). Through their respective attorneys of record, Plaintiff and Trustee agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

**I. INTRODUCTION**

1.1 On August 18, 2009, Plaintiff sued Defendant Debt Relief USA, in the public interest under the Deceptive Trade Practices Act (“DTPA”)<sup>1</sup>. The lawsuit alleged that Debt Relief USA, an Addison, Texas, based debt settlement firm, misled consumers in Texas and throughout the country regarding the legality of, the benefits obtained by, and the costs associated with, its debt settlement services. Specifically, Defendant misrepresented its authority to operate in Texas, as its business model was such that it was required to be registered with the State as a debt management services provider, yet it failed to do so. Defendant filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”)

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<sup>1</sup> Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2010).

on June 18, 2009, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division, Case No. 09-33836-sgj-11 (“Bankruptcy Case”). On June 24, 2009, the case was converted to a Chapter 7 proceeding and the Trustee was appointed.

1.2 The Plaintiff and Trustee, having been represented by counsel and acting by and through such counsel, have consented to (a) settlement of the State’s lawsuit without trial or adjudication of any issue of fact or law and without Defendant or Trustee admitting liability for any of the matters alleged in the Petition and (b) entry of this Judgment by this Court. This Agreed Final Judgment settles only the State’s claims against Defendant Debt Relief USA, Inc., and shall not act as a bar to any claim by the State nor preclude the State from seeking any remedy against any other persons, corporations, or entities, including persons who may be subject to portions of this Judgment as persons acting in active concert or participation with Defendant or persons who are party to any indemnification agreement with Defendant.

1.3 **NOW, THEREFORE**, the Plaintiff and Trustee having requested the Court to enter this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

## **II. STIPULATIONS**

2.1 The parties agree to the entry of this Judgment and, at their request, the court **FINDS** that:

- A. It has jurisdiction over the subject matter of this action;
- B. It has jurisdiction over the Defendant;
- C. Venue is proper in Travis County, Texas;
- D. The activities of Defendant constitute trade and/or commerce;
- E. Entry of this judgment is in the public interest;

- F. This judgment is non-appealable;
- G. Trustee acknowledges notice of this permanent injunction and acceptance of the same; therefore no writ need be issued;
- H. The State's action against Debt Relief USA, including the entry and enforcement of this Judgment, is exempted pursuant to 11 U.S.C. § 362(b)(4) from the automatic stay of 11 U.S.C. § 362(a) et seq. The State acknowledges however that also in accordance with § 362(b)(4) as further set forth in this Judgment, it shall not be permitted to collect the monetary judgment contained herein except through the Bankruptcy Court; and
- I. The court shall have continuing jurisdiction to enforce this judgment.

### **III. DEFINITIONS**

3.1 For the purposes of this Agreed Final Judgment and Permanent Injunction, the following definitions shall apply:

- A. "Clear and conspicuous" and "Clearly and conspicuously" mean that the required disclosure is in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in direct proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. For print communications, the message shall be in a type size and location sufficiently noticeable for a consumer to read and

comprehend it, in print that contrasts with the background against which it appears. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for a consumer to comprehend it. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented in the audio or visual portions of the communication so as reasonable for the viewer to understand it. In any communication presented solely through visual or audio means, the message must be made through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Any visual image shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for a consumer to read and comprehend it. The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

- B. “Payment Information” means bank or financial institution account information that will be used to make a payment. This term does not include non-bank specific information including, but not limited to, name, address, telephone number.
- C. The “Effective Date” of the Judgment is the date this Judgment is signed by the Court.

- D. “Debt Settlement” means any kind of debt relief service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector.

#### **IV. PERMANENT INJUNCTION**

4.1 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Debt Relief USA, Inc. is hereby permanently restrained and enjoined from engaging in, participating in, or assisting others to engage or participate in debt settlement or from selling, administering, or soliciting debt settlement services.

4.2 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant, and those bound by TEX. R. CIV. P. 683, shall be permanently enjoined, restrained, and prohibited from engaging in the following conduct:

- A. Misrepresenting any terms and conditions associated with any goods or services offered for sale, sold, or serviced by Defendant, including, but not limited to:
- i. Misrepresenting that a contract or other binding agreement is an application for qualification in Defendant’s debt settlement program or subject to a “review board” analysis or term or phrase of similar import.
  - ii. Misrepresenting that Defendant can stop or prevent contact and collection efforts by consumers’ creditors.

- iii. Misrepresenting the effect of Defendant's goods or services on consumers' credit rating.
  - iv. Misrepresenting the costs associated with Defendant's goods or services.
  - v. Misrepresenting Defendant's, or any of Defendant's employees', past qualifications or experience.
  - vi. Misrepresenting Defendant's relationship with any attorney or law firm, including misrepresenting that Defendant works under the direction or supervision of an attorney.
  - vii. Misrepresenting the success of Defendant's debt settlement program, including settlement rates.
  - viii. Misrepresenting the time it will take to settle a consumer's debts.
  - ix. Misrepresenting the amount that a consumer must save in order to settle that consumer's debts.
- B. Misrepresenting that Defendant's debt settlement program has a fixed term or a fixed cost.
- C. Representing, directly or indirectly, that Defendant will settle consumers' debts for a certain percentage of the debt, or within a certain percentage range, unless:
- i. Defendant has a substantial basis in fact for the representations.  
For purposes of compliance with this term, the substantial basis in fact shall be:
    - a. Contractual agreements with creditors to settle debts with

clients of the Defendant at the represented percentage of the debt, or within the represented percentage range, or

- b. Documented settlement data, including copies of settlement letters, from six months immediately preceding such representation, which reflects that over 50% of the debts enrolled in Defendant's debt settlement program settled with a percentage savings that is the same as or higher than the represented savings percentage or savings percentage range; and
  - ii. Defendant calculates any represented savings percentage by dividing the difference between consumers' debt amounts at the time of enrollment and settlement amounts, by consumers' debt amounts at the time of enrollment.
- D. If Defendant requires consumers to make set monthly payments for their debt settlement services that are based on an estimated savings amount, failing to clearly and conspicuously disclose, prior to enrolling a consumer in the debt settlement program and obtaining payment information from the consumer:
- i. The specific amount each month that is held by Defendant;
  - ii. The specific amount each month that is deposited in a bank account as savings;
  - iii. The location of the consumer's savings account (i.e. the name and contact information of the financial institution holding the

- consumer's money);
- iv. The specific estimated settlement percentage used to calculate the consumer's monthly payment, which is substantiated in accordance with 4.2.C. above; and
  - v. In direct proximity to 4.2.D.iv. above, the fact that the percentage is only an estimate and that individual results may vary.
- E. Failing to clearly and conspicuously disclose, prior to receiving any payment information from consumers, each of the following:
- i. All material terms related to the goods or services purchased by the consumer, including, but not limited to:
    - a. The total price and an itemized list of the components of that price, and any other costs associated with Defendant's debt settlement program;
    - b. Defendant's cancellation and refund policies, including any cancellation and refund rights created by this Judgment;
    - c. The specific amount of time and money Defendant has estimated that it will take to settle the consumer's debts; and
    - d. The specific amount of money the consumer must save before Defendant will make a bona fide offer to settle.
  - ii. The identity of any of a consumer's creditors known by Defendant not to work with Defendant;
  - iii. Each of the following facts, if true, regarding Defendant's debt

settlement program:

- a. Defendant cannot guarantee that consumers' creditors will agree to settle for any amount less than the full amount owed, and that creditors may not accept reductions in balances, interest rates, or fees;
- b. That any expected program result is only an estimate or illustration;
- c. Any final determination as to whether or not to accept any particular settlement offer is made by the consumer;
- d. Defendant cannot and will not assist with certain types of debt, including but not limited to, student loans;
- e. Enrollment in a debt settlement program, which includes ceasing communications with and ceasing payments to creditors, will likely result in collection efforts by the consumers' creditors, including increased phone calls and mailings;
- f. Defendant will not contact consumers' creditors until several months after the consumers' enrollment in the debt settlement program;
- g. Consumers may be sued by their creditors if the consumers stop making payments on their debts;
- h. Defendant will not represent or provide legal representation for consumers in defense of any lawsuit that is filed by a

creditor;

- i. Consumers' debt may continue to increase while participating in Defendant's debt settlement program, including but not limited to interest, late fees, and penalties.
  - j. Consumers may owe taxes on forgiven debt amounts;
  - k. In general, consumers can expect their credit score to decline in the program; and
  - l. Defendant does not provide legal advice, tax advice, financial advice or planning, credit counseling, or credit repair services, and consumers should contact other entities or individuals if they are interested in those services.
- iv. The name and contact information of any related entities, or any other entities that will be providing all or part of the services under the debt settlement agreement, and the services those respective entities will provide. If Defendant represents that any attorneys or law firms provide any services, Defendant shall clearly and conspicuously disclose in detail the services such attorneys or law firms provide, whether such attorneys will establish an attorney-client relationship with the consumer, and any limitations placed on that relationship.
- F. Failing to obtain a consumer's express verifiable consent to each of the disclosures in Paragraph 4.2.E. above prior to obtaining any payment from the consumer and enrolling that consumer in a debt settlement program.

Such express verifiable consent must be obtained either with a written signature by the consumer acknowledging or accepting each individual disclosure, or an audio recording of the consumer's acknowledgment and acceptance of each individual disclosure.

- G. Failing to clearly and conspicuously disclose each of the disclosures in Paragraph 4.2.E.iii. above on each of Defendant's web sites and during any sale of a debt settlement program.
- H. Misrepresenting that Defendant has, will, or is able to perform any unique analysis of consumers' debt in order to provide recommendations as to an appropriate form of debt relief. Such misrepresentation includes, but is not limited to:
  - i. Representing to consumers that debt settlement is the best option for a consumer if the only analysis done is to confirm that the amount and type of debt is sufficient for their program; or
  - ii. Having the consumer fill out budgets or other financial forms or statements, unless those forms are used by Defendant to perform an analysis of the consumer's financial situation.
- I. Disparaging or misrepresenting any other debt relief option, including but not limited to consumer credit counseling, debt management plans, debt consolidation, and bankruptcy.
- J. Describing the negative aspects of alternative forms of debt relief, including but not limited to consumer credit counseling, debt management plans, debt consolidation, and bankruptcy, while failing to disclose any

comparable negative aspects of debt settlement.

- K. Failing to clearly conspicuously disclose to a consumer any settlement offers that are made to or received from any of that consumer's creditors.
- L. Making any statement or representation, whether written or oral, that conflicts with, contradicts, or negates, the required disclosures contained in this Judgment, or that suggests to a consumer that the required disclosures are not important.
- M. Failing to comply with TEX. FIN. CODE CH. 394.
- N. Requesting or receiving payment of any fee or consideration from a person for any debt settlement service until Defendant has provided the customer with documentation in the form of a settlement agreement or other such valid contractual agreement, that the particular debt has, in fact, been settled or otherwise reduced.

#### **V. CIVIL PENALTIES AND RESTITUTION**

5.1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiff shall have judgment against Defendant, and shall be granted allowed claims in the Bankruptcy Case, in the total amount of THIRTY ONE MILLION THREE HUNDRED THIRTEEN THOUSAND SIXTY SIX DOLLARS (\$31,313,066.00), which will be allocated as follows:

- A. ONE MILLION THREE HUNDRED EIGHTY SIX THOUSAND DOLLARS (\$1,386,000.00) shall be allocated to the State as civil penalties.
- B. TWENTY NINE MILLION NINE HUNDRED TWENTY SEVEN THOUSAND SIXTY SIX DOLLARS (\$29,927,066.00) shall be allocated

as restitution to all nationwide customers of Debt Relief USA. As part of the Bankruptcy Case, the parties estimate that three million seven hundred fifty four thousand nine hundred forty five dollars (\$3,754,945.00) will be paid to consumers as a priority claim, which will reduce the amount of restitution owed to those consumers accordingly. Any funds paid to the State pursuant to its claims in the Bankruptcy Case will be distributed first to consumers as restitution in the following manner:

- i. The Court hereby appoints the firm of Litzler, Segner, Shaw & McKenney, LLP, who have provided accounting services to the Chapter 7 Trustee in the Bankruptcy Case, to distribute restitution to consumers. The accounting firm has agreed to compensation for its services and expenses as specified in the settlement agreement reached in the Bankruptcy Case between the Attorney General and Chapter 7 Trustee.
- ii. Payment of the State's claim from the Bankruptcy Case will be made to Litzler, Segner, Shaw & McKenney, LLP, which will then disburse funds: 1) first, pro-rata to consumers who had "set-aside" funds (money paid to Defendant as savings towards settlings consumers' debts, and not as fees) which exceeded amounts paid directly through the Bankruptcy Case, and 2) second, pro rata to all consumers as reimbursement of fees paid for Defendant's services.

## **VI. MISCELLANEOUS**

6.1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant

shall, in connection with any related investigation, cooperate in good faith with the State and appear, or cause its officers, employees, or representatives to appear, at such places and times as the State shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for other matters as may be reasonably requested by the State.

6.2 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that nothing in this Judgment shall be construed to impose liability upon the Chapter 7 Trustee for actions consistent with the Bankruptcy Code and pursuant to Bankruptcy Court order; provided, however, that the Chapter 7 Trustee shall not take actions inconsistent with this Judgment or seek to collaterally attack the provisions of this Judgment in Bankruptcy Court. Nothing in this Judgment shall be construed to require the Chapter 7 Trustee to violate an order issued by the Bankruptcy Court.

6.3 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the State of Texas shall have all writs of execution and other process necessary to enforce this Agreed Final Judgment and Permanent Injunction. Defendant, by the signature of its authorized representative below, hereby acknowledges notice of this permanent injunction and acceptance of same; therefore, no writ need be issued.

6.4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties are responsible for paying their own costs of court.

6.5 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant shall not represent to the public that this Judgment constitutes approval by Plaintiff or this Court of any of Defendant's actions or business activities.

6.6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all relief

not expressly granted herein is denied.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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PRESIDING JUDGE

**AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:**

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DEBT RELIEF USA, INC.

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First Assistant Attorney General

BILL COBB  
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PAUL D. CARMONA  
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ROBERT NEWHOUSE  
Chapter 7 Trustee for Debt Relief USA Inc.

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