

## SETTLEMENT, COMPROMISE AND MUTUAL RELEASE AGREEMENT

This Settlement, Compromise and Mutual Release Agreement (the "Agreement") is made and entered on this \_\_\_ day of \_\_\_\_\_, 2010, by and between Robert Newhouse (the "Trustee"), solely in his capacity as the Trustee under chapter 7 of title 11 of the United States Code, 11 U.S.C. §§ 101-1352 as amended (the "Bankruptcy Code")<sup>1</sup> for the bankruptcy estate of Debt Relief, USA, Inc. (the "Debtor") and the State of Texas by and through the Office of the Attorney General, Consumer Protection and Public Health Division (the "Attorney General"). The Trustee and the Attorney General are, each, a "Party" and, collectively, the "Parties").

### **I. Statement of Facts**

The Parties stipulate and agree to the facts set forth below:

1.1 **The Bankruptcy Case.** On June 18, 2009 (the "Date of Bankruptcy"), the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code, initiating Bankruptcy Case No. 09-33836-sgj (the "Bankruptcy Case"). The Debtor was in the business of consumer debt settlement, headquartered in Addison, Texas, but doing business throughout several states. Debt Relief U.S.A. was required pursuant to TEX. FIN. CODE CH. 394 to register with the Office of the Texas Consumer Credit Commissioner, but failed to do so. TEX. FIN. CODE ANN. § 394.215(a) states that an agreement for debt management services between a consumer and an unregistered provider is void.

1.2 **Conversion.** On June 25, 2009 (the "Conversion Date"), the Bankruptcy Case was converted from chapter 11 to chapter 7 of the Bankruptcy Code. The Trustee was appointed as the chapter 7 Trustee in the Bankruptcy Case.

1.3 **Debtor Funds at Conversion Date.** On the Date of Bankruptcy, the Debtor had three (3) bank accounts. Just prior to the Conversion date, the Debtor consolidated all three accounts into a debtor in possession account (the "DIP Account"). The balance of the DIP Account as of the Conversion Date was \$4,704,940.30. The Trustee froze the DIP Account on the Conversion Date. Subsequently, an unidentified deposit in the amount of \$2,532.00 was made and the DIP Account was charged \$146.65 for check printing. On July 13, 2009, the DIP Account balance of \$4,707,325.65 was transferred to an interest bearing account controlled by the Trustee (the "Estate Account"). Certain non-consumer related deposits were received by the trustee in the amount of \$20,424.90. The Trustee has disbursed money from the Estate Account pursuant to court orders entered in the matter to cover storage fees, W-2 production, and mailing such that the balance on April 19, 2010 is \$4,723,395.08.

1.4 **Source of the Estate Account.** As a part of its debt settlement business, the Debtor received upfront fees, monthly maintenance fees and negotiation fees from the consumers (the "Fees" and the "Consumer Creditors"). In addition, Consumer Creditors paid money to the Debtor for use in the settlement of their unsecured debt (the "Settlement Amounts").

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<sup>1</sup> All of the statutory references in this Agreement, unless other indicated, are to the Bankruptcy Code.

1.5 **The Lawsuit.** On August 18, 2009, the State of Texas, by and through the Texas Attorney General, sued the Debtor under the Texas Deceptive Trade Practices Act alleging false, deceptive, and misleading acts and practices in the sale and maintenance of its debt settlement program and seeking restitution for the Consumer Creditors (the "Lawsuit"). The Lawsuit was filed in Travis County, 53rd Judicial District Court, Cause No. D-1-GV-09-001570. The Trustee and the Attorney General filed a letter agreement under Rule 11 of the Texas Rules of Civil Procedure to stay the Lawsuit pending the execution of this Agreement. The Lawsuit is expressly exempt from the automatic stay pursuant to 11 U.S.C. 362(b)(4).

1.6 **The Attorney General's Proofs of Claim.** The Attorney General subsequently filed a proof of claim in the Bankruptcy Case on behalf of the Consumer Creditors, seeking to recover, *inter alia*, all monies he alleges are Settlement Amounts paid by current Consumer Creditors and any fees that were paid to the Debtor by current or former Consumer Creditors (the "Attorney General's Initial Proof of Claim"). The Attorney General has standing to file the Attorney General's Initial Proof of Claim and any subsequent amendments on behalf of all of the Consumer Creditors, wherever located. The Attorney General's Initial Proof of Claim is unliquidated. The Attorney General subsequently filed an amendment to the Attorney General's Initial Proof of Claim in the amount of \$29,880,879.76 (the "Amended Proof of Claim"). The amount of the Amended Proof of Claim was determined from the Debtor's books and records and represents all money received by the Debtor from Consumer Creditors over the entirety of the Debtor's company's history. The Attorney General asserts that under Subchapter 394 of the Texas Finance Code, the Consumer Creditors are entitled to a claim for the entire balance of Fees and Settlement Amounts paid to the Debtor.

1.7 **This Agreement.** The Parties concede that there exist *bona fide* disputes and controversies between them regarding the allegations in the Lawsuit and specifically, the Attorney General and the Trustee disagree about whether the bulk of the Estate Account is property of the Estate pursuant to Section 541. The Parties desire to dispose of all of the controversies and disputes between them, including all claims and causes of action of any kind against the Debtor's estate that currently exist or may exist in the future that relate in any way to the occurrences described in the Lawsuit or the Texas Attorney General's Proofs of Claim. The Parties recognize that there may be claims or injuries arising out of the occurrences described in the Lawsuit and the Texas Attorney General's Proofs of Claim that are unknown to them at the time of the execution of this Agreement, or that may arise in the future; however, the Parties have negotiated this Agreement with the full knowledge of the possibility of additional claims or injuries and intend that this Agreement settle and finally dispose of all of such claims or injuries against the Debtor's estate arising out of the described occurrences, whether known or unknown. This Agreement is a compromise and settlement of all claims that are in dispute and nothing in this Agreement shall constitute an admission of liability by any of the Parties, all liability being expressly denied.

1.8. **Payments to Consumer Creditors.**

(a) As a material condition to this Agreement, payments shall first be made to those consumers, who at the time of the bankruptcy filing, had on deposit with the Debtor funds specifically earmarked as "Settlement Amounts" for payment of those consumers' debt

obligations. Regrettably, due to the lack of funds in the estate available to pay claims, there is insufficient money to refund any/all Fees paid by former or current Consumer Creditors.

(b) The firm of Litzler, Segner, Shaw & McKenney, LLP (the "Accounting Firm"), which has provided accounting services to the Chapter 7 Trustee in this case, agrees to (1) distribute allowed priority restitution payments to consumers as set forth in Section 2.3 *infra* (the "First Consumer Payments") and (2) further agrees to distribute payment, as set out below, to those consumers who will be paid in lieu of a distribution to the State of Texas on its allowed general unsecured claim. The Accounting Firm has agreed to accept the sum of \$7,000.00 for its services and expenses in distributing to Consumer Creditors the funds received on the State of Texas's allowed general unsecured claim (which sum includes, but is not limited to, all costs incurred for its accounting services, postage and printing costs). The \$7,000.00 shall be paid to the Accounting Firm out of the funds distributed on the State's allowed general unsecured claim.

(c) In distributing the funds received on the State's allowed general unsecured claim to Consumer Creditors, as the address shown on a proof of claim filed by a Consumer Creditor and the address reflected in the Debtor's books and records would respectively be the best known address for a given Consumer Creditor, the Accounting Firm shall use those addresses. In the event that any payments are returned to the accounting firm as undeliverable, rather than incurring the expense of attempting subsequent delivery to Consumer Creditors, the estate shall turn those funds over to the Unclaimed Property Division of the Texas Comptroller, where, pursuant to applicable law, the Consumer Creditors will be able to retrieve those funds in perpetuity.

## **II. Settlement Terms**

In consideration of the mutual promises contained in this Agreement, the Parties agree to the settlement terms set forth below:

2.1 **Objections to Consumer Creditors' Proofs of Claim.** Substantially concurrent with the filing by the Trustee of the motion under Federal Rules of Bankruptcy Procedure 9019 (the "9019 Motion") submitting this Agreement to the Bankruptcy Court for approval, the Trustee shall file omnibus objections to any and all Proofs of Claim filed by any and all Consumer Creditors as duplicative of the Amended Proof of Claim (the "Omnibus Objections"). The Attorney General agrees to serve as the primary contact with the Consumer Creditors, and to appear, in person or by phone, with the Trustee in both the Trustee's prosecution of the Omnibus Objections and the settlement of the Consumer Creditors' Proofs of Claim.

2.2 **Interim Fee Applications.** Within seven (7) days after the entry of an Order not stayed by any appeal approving this Agreement, Quilling, Selander, Cummiskey & Lownds, P.C. and Litzler, Segner, Shaw & McKenney, LLP (the "Trustee's Professionals") shall submit interim fee applications to the Court for approval (the "Interim Applications"). The Attorney General will take no position on the Interim Applications for fees and expenses up to the amounts of \$170,000.00 (for Quilling, Selander, Cummiskey & Lownds, P.C.) and \$135,000 (for Litzler, Segner, Shaw & McKenney, LLP) respectively.

2.3 **Payment of Priority Wage Claims and Priority Payments to Consumer Creditors.** Substantially concurrent with the Interim Applications, the Trustee shall file a motion with the Court for authority to pay the administrative claims of the landlords pursuant to the Court's orders previously entered in those matters. As a material condition to this Agreement, the Court shall enter an Order allowing the Consumer Creditors covered by the Attorney General's Amended Proof of Claim an amount up to \$2,425.00 as priority unsecured claims pursuant to 11 U.S.C. § 507(a) (7) (the "First Consumer Payments") by estate checks from the Estate Account so that they may receive an immediate distribution from the estate concurrently with the priority wage claims of the Debtor's employees. The list of Consumer Creditors eligible for Estate Account payments under the Order shall be determined as those named in and accounted for by the Debtor's books and records and it is a material condition of this Agreement that those Consumer Creditors receiving the First Consumer Payments shall be those Consumer Creditors with Settlement Amounts in their accounts as reflected in the Debtor's books and records up to the full amount of the Settlement Amounts.

2.4 **Subsequent Payments.** Subsequent payments to the unsecured creditors in the Bankruptcy Case shall be made pursuant to the Bankruptcy Code. The Attorney General's unsecured Amended Proof of Claim in the amount of \$29,880,879.76 shall be fully allowed and will be reduced by the total amount of the priority claims paid to Consumer Creditors pursuant to 11 U.S.C. §507(a)(7) as First Consumer Payments (described *supra* Section 2.3). Pursuant to the authority of the Texas Deceptive Trade Practices Act, any amounts received by the Attorney General on its unsecured claim shall be paid as restitution to Consumer Creditors in accordance with the attached agreed judgment to be entered in the Lawsuit.

2.5 **Trustee's Compensation.** The Trustee shall be entitled to payment of compensation in the amount of \$83,000.00, subject to Court approval.

2.6 **Subsequent Payments to the Trustee's Professionals.** After payment of the amounts requested in the Interim Applications, the Trustee's Professionals agree in good faith to limit their fees to an additional maximum amount of \$50,000.00, subject to unforeseen circumstances and Court approval. The Attorney General shall take no position on any subsequent fee applications of the Trustee's Professionals up to \$50,000.00.

2.7 **Mutual Release and Covenant Not to Sue.** The Trustee, in his capacity as trustee of Debt Relief USA and as the authorized representative of Debt Relief USA, hereby releases, acquits and forever discharges the State of Texas from any and all claims or causes of action, counterclaims, demands, controversies, costs, debts, or damages which the Trustee or Debt Relief USA has or may come to have against the State of Texas at law or in equity, in contract, in tort, or otherwise, whether known or unknown, suspected or unsuspected, and arising out of the facts and circumstances set forth and/or originating in the Lawsuit, the Attorney General's Proof of Claim or Amended Proof of Claim, or the Omnibus Objections (collectively, the "Debtor's Released Claims").

The Attorney General, by and through his Consumer Protection and Public Health Division, releases, acquits and forever discharges the Trustee solely in his capacity as trustee for the bankruptcy estate of Debt Relief USA, Inc., from any and all claims or causes of action, counterclaims, demands, controversies, costs, debts, or damages which the Attorney General, by

and through his Consumer Protection and Public Health Division, has or may come to have against the Trustee solely in his capacity as trustee of the Debt Relief USA estate, at law or in equity, in contract, in tort, or otherwise, whether known or unknown, suspected or unsuspected, and arising out of the facts and circumstances set forth and/or originating in the Lawsuit, the Attorney General's Proof of Claim or Amended Proof of Claim, or the Omnibus Objections (collectively, the "State's Released Claims"), provided, however, that the State's Released Claims expressly do not include the claims of any other Texas state agency or claims pursuant to any other statute or regulation (by way of example but not limitation, claims of the Texas Comptroller and Texas Workforce Commission).

The Parties further covenant not to sue on account of any of the Released Claims described above.

2.8 **Bankruptcy Rule 9019.** This Agreement shall be the subject of a 9019 Motion and approved by an order of the Bankruptcy Court in the Bankruptcy Case. The 9019 Motion (the form and content of which shall be acceptable to the Attorney General shall be drafted and filed by the Trustee with the Bankruptcy Court. The Trustee agrees to request a hearing on the 9019 Motion as promptly as possible. The 9019 Order shall be binding not only upon the Parties, but also upon any subsequent Trustees appointed in the Bankruptcy Case.

2.9 **Agreed Judgment in the Lawsuit.** As a material condition to this Agreement, fifteen days after the Bankruptcy Court has approved the 9019 Order (unless a stay is issued pending appeal), the parties shall sign an agreed judgment in the form as attached hereto and shall file such agreed judgment in the Lawsuit.

### **III. General Provisions**

3.1 **Effective Date.** This Agreement shall take effect and become binding on each Party as of the date that the 9019 Order is entered and not stayed by any appeal.

3.2 **Headings.** The various headings in this Agreement are inserted for convenience and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

3.3 **And/Or.** "And" and "or" shall be construed disjunctively or conjunctively as is necessary.

3.4 **Tense.** The past tense includes the present tense where the clear meaning is not distorted by change of tense, and vice-versa.

3.5 **Plural and Singular.** For the purposes of this Agreement, the singular shall include the plural and the plural shall include the singular.

3.6 **Counterparts.** This Agreement, and any amendments, waivers, consents or supplements may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall together constitute one and the same Agreement.

3.7 **Amendments.** This Agreement may only be amended, or portions waived, by the written agreement of the Parties, approved by Order of the Court.

3.8 **Governing Law.** This Agreement shall be governed by and interpreted under applicable Bankruptcy law.

3.9 **Venue and Jurisdiction.** All of the acts contemplated by this Agreement shall be performed in Dallas County, Texas. The Bankruptcy Court for the Northern District of Texas, Dallas Division, shall retain sole and exclusive jurisdiction for any matter related to the 9019, while the State Court shall have concurrent jurisdiction for any matter related to the Agreed Judgment.

3.10 **Binding Effect.** All of the rights of the Parties under this Agreement shall inure to the benefit of their successors and assigns.

3.11 **Entire Agreement.** This Agreement, together with any other agreement executed in connection herewith, is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

3.12 **Agreement Prepared Jointly by the Parties' Attorneys.** This Agreement has been prepared by the joint efforts by the respective attorneys for each of the Parties. Each Party acknowledges that it has been represented by counsel and has received independent legal advice regarding the meaning and effect of the terms of this Agreement. Each Party agrees that any rule of interpretation or construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation, construction, or enforcement of this Agreement.

3.13 **Acknowledgment of the Entire Agreement.** Both Parties acknowledge that it has carefully read this Agreement, including all documents or exhibits to which it refers; that this Agreement and the attached Agreed Judgment expresses the entire agreement between the Parties concerning the subjects it purports to cover; and that each Party has executed this Agreement freely and of its own free will and accord. The Parties each represent that no Party has made any representations, other than as expressly set forth herein, regarding this Agreement.

3.14 **Further Assurances.** Each Party to this Agreement shall execute and deliver such documents and shall take such actions as may be reasonably necessary or desirable to effect the transactions described in this Agreement.

3.15 **Facsimile / Electronic Signatures.** The manual signature of any Party to this Agreement that is transmitted to any other party or counsel to any other Party by facsimile or electronically in PDF format shall be deemed for all purposes, to be an original signature.

3.16 **No Admission.** Except as set forth in the Agreed Judgment, nothing in this Agreement or any negotiations or proceedings in connection therewith shall constitute or be deemed or claimed to be evidence of an admission by the Trustee of any liability, the violation of law, or wrongdoing whatsoever or the truths or untruths, or merit or lack of merit, of any claim or defense. Neither this Agreement nor any negotiations or proceedings in connection herewith

may be used in any proceeding against the Trustee for any purpose whatsoever, except with respect to the effectuation and enforcement of this Agreement

Intending to be legally bound, the Parties have signed this Agreement on the date first written above.

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[SIGNATURE PAGES FOLLOW]**

Robert Newhouse

By: \_\_\_\_\_  
Title: Chapter 7 Trustee

Date: \_\_\_\_\_, 2010

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared Robert Newhouse, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same as the act of such entity for the purposes and consideration therein expressed, and in the capacity therein stated.

\_\_\_\_\_  
Notary Public State of Texas

