

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO: 10 CV 016777

STATE OF NORTH CAROLINA, *ex rel.*
ROY COOPER, Attorney General,

Plaintiff,

v.

THE CONSUMER LAW GROUP, P.A.,
MICHAEL L. METZNER,
AMERICAN DEBT NEGOTIATORS, INC.,
RAN DAVID BARNEA, and DANIEL T. POST,

Defendants.

CONSENT JUDGMENT

THIS CAUSE came on to be heard before the undersigned judge for entry of a consent judgment. It appears to the Court that the State and the defendants have resolved the matters in controversy between them and have consented to the terms of this judgment. The Court further finds that good cause exists for the entry of this consent judgment and permanent injunction.

I. FINDINGS

The Court, with the consent of the parties, finds as follows:

1. The Court has jurisdiction over the parties and subject matter of this action.
2. The State filed its verified Complaint, along with a Motion for a Temporary Restraining Order and a Preliminary Injunction, with supporting affidavits, on 1 October 2010.
3. Each defendant was properly served with a copy of the State's Complaint and Motion on 5 October 2010.

4. In its Complaint, the State alleged that the defendants were offering debt adjusting services and collecting advance fees for such services in violation of the Debt Adjusting Act, N.C. Gen. Stat. § 14-423, *et seq.*, and that the defendants were otherwise engaged in unfair and deceptive practices in the marketing, solicitation and performance of their debt relief services, in violation of the Unfair Practices Act, N.C. Gen. Stat. § 75-1.1.

5. In addition, the State alleged that defendants collected advance fees from North Carolina consumers for the performance of debt settlement services, and that such advance fees are prohibited by North Carolina's Debt Adjusting Act, N.C. Gen. Stat. § 14-423, *et seq.*

6. This Court entered a preliminary injunction by consent in this cause on 15 October 2010. In the preliminary injunction order, the defendants agreed, from the date of the order going forward, to cease soliciting, offering, or collecting any further fees for their debt relief services in the State of North Carolina.

7. Since 15 October 2010, the defendants aver that they have complied with the terms of the preliminary injunction order. The defendants further aver that, since the date of the preliminary injunction order, the defendants continued to provide services to enrolled North Carolina residents and have foregone the collection of an additional \$587,796.49 in fees that did not constitute advance fees, and would otherwise have been collected by them pursuant to their contracts with North Carolina consumers.

8. On 25 March 2011, this Court denied a motion to dismiss filed by the defendants.

9. The defendants have agreed to the terms of this Consent Judgment solely for the purpose of voluntarily resolving disputed claims and to avoid the expense and uncertainty of continued litigation. In entering into this Consent Judgment, the defendants do not admit or acknowledge that they have violated the law in the conduct of their business in North Carolina or

elsewhere.

10. The State is entitled to the relief set forth herein pursuant to N.C. Gen. Stat. § 14-425 and N.C. Gen. Stat. §§ 75-14, 75-15, and 75-15.1.

BASED ON THE FOREGOING and the record herein, the Court concludes that good and sufficient cause exists for the entry of this judgment and permanent injunction pursuant to Chapters 14 and 75 of North Carolina General Statutes; and the Court adopts the agreement of the parties and these findings as its determination of their respective rights and obligations.

II. INJUNCTIVE PROVISIONS

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

That the defendants are hereby permanently enjoined from:

- (A) Directly or indirectly advertising, marketing, soliciting, or offering any debt settlement services, debt negotiation services, or any related debt adjusting services to North Carolina residents, other than continuing to provide services to existing North Carolina customers who enrolled for such services prior to the Court's entry of the preliminary injunction order on 15 October 2010 in compliance with applicable law;
- (B) Entering into contracts with any North Carolina residents for the performance of any debt settlement services or debt negotiation services;
- (C) Charging, collecting, or receiving any further fees directly or indirectly, from any North Carolina residents for the performance of debt settlement services or debt negotiation services; except that, for debt settlements actually reached by the defendants on or after 1 October 2011 with existing North Carolina customers' creditors, defendants may charge reasonable post-settlement fees only to the

extent that such fees are in full compliance with the provisions of the Debt Adjusting Act, N.C. Gen. Stat. § 14-423, *et seq.*, and the Telemarketing Sales Rule, 16 C.F.R. §§ 310.1, *et seq.*, and § 310.4(a)(5), relating to debt relief services;

- (D) Directly or indirectly offering, soliciting, or providing any debt management services to North Carolina residents, unless the defendants' debt management program is in compliance with the Debt Adjusting Act, N.C. Gen. Stat. §§ 14-423, *et seq.*, and, in particular N.C. Gen. Stat. § 14-426(7);
- (E) Making any deceptive or misleading representations to North Carolina residents in the solicitation, offering or provision of debt settlement, debt negotiation, debt management, or any related debt adjusting services, including, but not limited to the following representations: (i) that the program is affiliated with, sponsored by, or sanctioned by any government entity; (ii) that the services provided to the consumer will be directly or indirectly performed, reviewed or monitored by attorneys; (iii) that the consumer will receive legal representation, including representation in claims filed against them by their creditors; or (iv) that the defendants' program is highly successful, is more beneficial than other alternatives to the consumer such as bankruptcy, that most consumers successfully complete the program, or any similar claims of the success of the defendants' program unless there exists verifiable, objective data substantiating the defendants' statements. The prohibitions in this paragraph shall also apply whether the defendants make the representations directly or through third party agents, contractors, or lead generators who solicit consumers on behalf of the

defendants; and

- (F) Engaging in any unfair or deceptive practices in the advertising, marketing, solicitation, offering, or provision of debt settlement, debt negotiation, debt management or any related debt adjusting services to North Carolina residents.

IT IS FURTHER ORDERED that, if any defendant violates any injunctive provision of this Consent Judgment, the Attorney General may seek the imposition of appropriate civil penalties against any one or more defendants for their own violations pursuant to N.C. Gen. Stat. § 14-425 and N.C. Gen. Stat. § 75-15.2.

III. AGREED FINANCIAL TERMS AND PAYMENT PROVISIONS

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff State of North Carolina, pursuant to N.C. Gen. Stat. § 75-1.1 and N.C. Gen. Stat. § 75-15.1, shall have and recover of the defendants the principal sum of six hundred and fifty thousand dollars (\$650,000.00), which sum represents the defendants' total and complete obligation to the State for monetary relief, including claims for restitution, and reimbursement of the State's costs and fees, as further provided below. Such sum is to be paid within thirty (30) days of the entry of this Consent Judgment.

The monies paid pursuant to this Consent Judgment shall be paid in restitution to North Carolina consumers who were formerly, or are currently, enrolled in the defendants' debt settlement program, except that the Attorney General may allocate an amount of up to fifty thousand dollars (\$50,000.00) for the State's attorneys' fees, investigative costs, or for consumer protection or education purposes, in the discretion of the Attorney General.

The Attorney General shall have discretion in apportioning and disbursing restitution in an amount and manner that he deems appropriate, and the Attorney General may prioritize

payments to consumers in his sole discretion. The defendants shall fully cooperate with the Attorney General in good faith in the Attorney General's administration and issuance of such refunds, including responding to reasonable requests by the Attorney General for customer information or any other information reasonably necessary to effectuate the refund process. Notwithstanding any other requests by the Attorney General, within fifteen (15) days of the date of entry of this Consumer Judgment, the defendants shall provide the Attorney General with the following information for all North Carolina customers enrolled in the defendants' debt settlement program: (i) the customer's full name; (ii) the customer's last known mailing address; (iii) the customer's telephone number; (iv) the total amount of advance fees paid by the customer to the defendants; (v) the customer's social security number, if such information was provided to the defendants; and (vi) whether the customer is actively enrolled in the defendants' debt settlement program or is inactive.

IV. GENERAL PROVISIONS

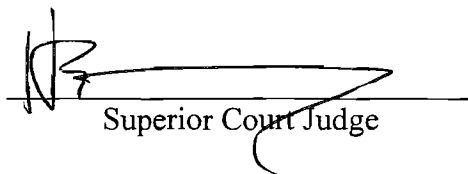
Cooperation With The State. In addition to cooperating in good faith with the State in the administration and issuance of refunds pursuant to this Consent Judgment, the defendants shall cooperate in good faith to resolve any consumer complaints filed with the Attorney General's Consumer Protection Division.

Full Resolution. This Consent Judgment shall fully resolve all legal claims and issues raised in the Complaint for all activities of the defendants up to the date of this Consent Judgment.

Binding Effect. This Consent Judgment shall be binding upon the plaintiff and the defendants, their respective owners, officers, directors, employees, agents, agencies, subsidiaries, affiliates, assigns, and any successors in interest.

IT IS SO ORDERED.

This the 23 day of January, 2012.




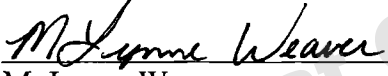
Superior Court Judge

CONSENTED TO:

Plaintiff:

STATE OF NORTH CAROLINA, *ex rel.*
ROY COOPER, ATTORNEY GENERAL

By:  1/20/12
Philip A. Lehman Date
Assistant Attorney General

 1/20/12
M. Lynne Weaver Date
Assistant Attorney General

Defendants:

By:  1/18/2012
Date

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