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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

EDL

12 FREEDOM DEBT RELIEF, LLC, a Delaware
13 limited liability company,

14 Plaintiff,

15 v.

16 CENTURY NEGOTIATIONS, INC., a
17 Pennsylvania corporation,

18 Defendant.

CV 12 2532

COMPLAINT FOR BREACH OF
CONTRACT AND DECLARATORY
JUDGMENT

JURY TRIAL DEMANDED

19
20 Plaintiff Freedom Debt Relief, LLC ("Plaintiff" or "FDR"), alleges as follows:

21 **I. NATURE OF THE ACTION**

22 1. This action arises from the failure of Defendant Century Negotiations, Inc.
23 ("Defendant" or "CNI") to comply with its contractual obligation to indemnify FDR, and hold
24 FDR harmless, from losses and expenses incurred by FDR as a result of CNI's alleged violations
25 of various state laws. That contractual obligation is set forth in the Client Servicing Agreement
26 ("Agreement") between FDR and CNI, dated November 16, 2004. A true and correct copy of the
27 Agreement is attached hereto as Exhibit A and incorporated herein by reference.

28 2. Specifically, certain CNI customers have asserted class and individual claims

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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1 against FDR based on CNI's alleged violations of Washington and Ohio law. FDR has been
2 forced to incur fees and expenses defending those claims, which are still pending. Under the
3 Agreement, FDR is entitled to be indemnified by CNI for the fees and expenses that have already
4 been incurred, as well as those that may be incurred in the future. Yet not only has CNI failed to
5 comply with its contractual indemnification obligations, but CNI (on its own and through its
6 insurer) improperly asserts that it is entitled to indemnification from FDR under the Agreement.
7 Thus, in addition to seeking recovery for damages caused by CNI's breach of contract, FDR seeks
8 a declaration of the parties' respective rights and obligations under the Agreement.

9 **II. PARTIES**

10 3. Plaintiff FDR is a Delaware limited liability company with its headquarters at
11 1875 South Grant Street, Suite 400, San Mateo, California. Plaintiff is engaged in the debt
12 resolution (or consumer credit advocacy) business, and provides valuable services to financially
13 constrained clients who can no longer afford to make minimum monthly payments on their
14 unsecured debts (usually credit cards), but who wish to avoid bankruptcy.

15 4. Defendant CNI is a Pennsylvania corporation with its headquarters at 1061 Main
16 Street, North Huntingdon, Pennsylvania. CNI is also engaged in the debt resolution business.

17 **III. JURISDICTION AND VENUE**

18 5. Subject matter jurisdiction is proper under 28 U.S.C. § 1332 inasmuch as there is
19 complete diversity of citizenship between the parties. CNI is a Pennsylvania corporation with its
20 principal place of business in Pennsylvania. FDR is a Delaware limited liability company with its
21 principal place of business in California, and no member of the limited liability company is a
22 citizen of Pennsylvania. The amount in controversy, exclusive of interest and costs, exceeds the
23 sum of seventy-five thousand dollars (\$75,000).

24 6. This Court has personal jurisdiction because CNI is, on information and belief,
25 doing business in California and in this District; the Agreement underlying this dispute was
26 entered into in this District; a substantial part of the events and injury giving rise to the claims set
27 forth herein have arisen in and caused harm in this District; and, pursuant to the parties'
28 Agreement, CNI has expressly agreed to jurisdiction in this District.

1 creditor. This process is then repeated until the client is debt-free (which may take four years or
 2 more). Since its inception, FDR has negotiated resolutions of more than \$1.5 billion in debt for
 3 more than 120,000 customers.

4 12. Many potential customers who contact FDR are not accepted for enrollment in its
 5 debt resolution program for a variety of reasons, including the failure to satisfy enrollment criteria
 6 established by FDR and its underwriting department.

7 13. CNI is also engaged in the debt resolution business. On or about November 16,
 8 2004, FDR and CNI entered into the Agreement attached as Exhibit A. Since that time, FDR has
 9 referred a number of potential customers to CNI pursuant to the Agreement.

10 14. When a referral is made by FDR, it is up to CNI to determine whether or not to
 11 enroll the customer based upon CNI's own proprietary underwriting procedures and specific
 12 enrollment criteria. A number of these referrals are rejected by CNI as a result of its own
 13 independent review. In those instances where CNI chooses to enroll a referred client, it will enter
 14 into a written contract with that client, in a form approved by CNI. The client does not enter into
 15 any agreement of any sort with FDR. Furthermore, if CNI chooses to enroll a referred client, CNI
 16 – and only CNI – is responsible for providing debt resolution services to the client, including
 17 communication with the client, collection of fees from the client, and the conduct of all
 18 negotiations with the client's creditors. Under the Agreement, CNI is obligated to pay to FDR a
 19 portion of the fees received from referrals who become CNI clients.

20 15. The Agreement provides that CNI and FDR are obligated to indemnify each other
 21 under specified circumstances. For example, Section 9 of the Agreement provides, among other
 22 things, that CNI is obligated is obligated to indemnify FDR and hold it harmless:

23 from any and all claims, actions, demands, proceedings, lawsuits or damages, and all
 24 expenses related thereto, including reasonable attorneys fees and court costs, incurred
 25 as a result of the negligence or acts or omissions of CNI ... or breach of CNI's
 26 obligations under this Agreement or **arising from a violation** of federal, **state or local**
 27 **laws** caused as **a result of the process established by CNI for performing services**
 28 under this Agreement. . . . FDR's right to indemnity under this Agreement will arise
 and be valid notwithstanding that joint or concurrent liability may be imposed on FDR
 by statute, ordinance, regulation or other law.

(Emphasis added.)

B. Claims Asserted Against FDR by Customers of CNI

16. On or about July 16, 2010, a CNI customer named Donald Webster filed suit in the United States District Court for the Northern District of Ohio against CNI, FDR and others, purporting to sue individually and on behalf of similarly situated Ohio residents for alleged violations of Ohio law in connection with the provision of debt resolution services. At no time did Mr. Webster ever enter into an agreement with FDR, nor did FDR ever agree to provide – or actually provide – any debt resolution services to him. On or about August 4, 2011, Mr. Webster was ordered by the Court to submit his claims against CNI and FDR to arbitration in accordance with his agreement with CNI. Mr. Webster commenced an arbitration proceeding with the American Arbitration Association (AAA) in which he again asserted individual and class claims based on alleged violations of Ohio law. On March 1, 2012, an arbitrator issued a partial final award holding that Mr. Webster is not entitled to pursue class claims in arbitration. He has since filed a petition to vacate that award, and proceedings on the petition are ongoing. In the meantime, Mr. Webster continues to pursue his individual claims against CNI, FDR and others.

17. On information and belief, on or about August 4, 2010, another CNI customer named Michael Rule filed suit against CNI and its chief executive officer, David Leuthold, in Washington state court, asserting class and individual claims for alleged violations of Washington law. On or about April 22, 2011, Mr. Rule filed an amended complaint adding additional defendants, including FDR, again purporting to bring suit individually and on behalf of similarly situated CNI customers in the State of Washington. At no time did Mr. Rule ever enter into an agreement with FDR, nor did FDR ever agree to provide – or actually provide – any debt resolution services to him. The action alleged that the debt settlement services provided by CNI and the contracts entered into by CNI with Mr. Rule and other customers violated Washington law. The action was subsequently removed to the United States District Court for the Eastern District of Washington, which ordered Mr. Rule to arbitrate his claims in accordance with his agreement with CNI. He thereafter commenced an arbitration proceeding with the AAA asserting individual and class claims (on behalf of CNI's Washington customers) based on alleged violations of Washington law. That matter is pending. Additionally, at least four other

1 arbitrations have since been filed against CNI and FDR, based on similar allegations and asserting
2 claims on behalf of individual CNI customers residing in Washington.

3 18. FDR has incurred, and continues to incur, substantial fees, expenses and costs in
4 defending the claims brought by customers of CNI, including Mr. Rule and Mr. Webster. Such
5 fees and costs to date exceed seventy-five thousand dollars (\$75,000).

6 19. The claims asserted by Mr. Rule, Mr. Webster and all other CNI customers who
7 have commenced arbitrations are premised on allegations that CNI's process for providing debt
8 settlement services violated applicable state laws, and FDR faces liability on those claims solely
9 as a result of CNI's alleged violations of those state laws. Thus, CNI is obligated under the
10 Agreement to indemnify FDR and hold it harmless "from any and all claims, actions, demands,
11 proceedings, lawsuits or damages, and all expenses related thereto, including reasonable attorneys
12 fees and court costs" incurred in connection with those proceedings. This would include not only
13 fees, costs and expenses incurred to date, but those in the future, as well as any settlements or
14 judgments. However, CNI has failed to comply with its contractual obligation to FDR.

15 20. Not only has CNI failed to comply with its contractual obligation to FDR, but it
16 has taken the position that it is entitled to indemnification *from FDR* for claims asserted by CNI's
17 Washington customers. In so doing, CNI has erroneously asserted that FDR "signs up the clients
18 in Washington state" for CNI. In reality, CNI obtains referrals from multiple sources (not just
19 FDR), and makes an independent decision on which clients to accept (or not accept) into its
20 program. Moreover, a number of potential clients referred by FDR to CNI are not accepted by
21 CNI for various reasons, apparently including the failure of such individuals to meet CNI's own
22 enrollment criteria (a process that CNI conducts entirely on its own). More recently, CNI's
23 insurance carrier, Tudor Insurance Company ("Tudor"), has reiterated the erroneous position that
24 FDR is obligated to indemnify CNI for the claims asserted by CNI's Washington customers, and
25 has asserted the equally erroneous claim that FDR is obligated to indemnify CNI for the costs
26 incurred in defending the claims asserted by Mr. Webster for alleged violations of Ohio law.
27 Based on these assertions, Tudor claims that it is entitled (under a subrogation theory) to
28 reimbursement of amounts allegedly paid by it to CNI.

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FIRST CLAIM FOR RELIEF
(Breach of Written Contract)

21. FDR realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 20, inclusive.

22. The Agreement attached hereto as Exhibit A is a valid and enforceable written contract between FDR and CNI.

23. CNI has breached the Agreement by refusing to indemnify FDR and hold it harmless for all fees, costs and expenses incurred by FDR in defending the claims asserted by CNI's customers and based on CNI's alleged violations of Washington and Ohio law.

24. FDR has performed each and all of the conditions, covenants, promises, and obligations imposed upon it by the terms of the Agreement.

25. As a direct and proximate result of CNI's breach of the Agreement, FDR has been damaged in an amount to be proven at trial, exceeding seventy-five thousand dollars (\$75,000).

SECOND CLAIM FOR RELIEF
(Declaratory Relief)

26. FDR realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 25, inclusive.

27. An actual controversy has arisen and exists between FDR and CNI under 28 U.S.C. § 2201 because there is a dispute as to the parties' respective rights and obligations under the Agreement, and in particular their respective indemnification rights and obligations under the Agreement.

28. As detailed above, FDR contends that it is entitled under the Agreement to be indemnified by CNI not only for all fees, expenses and costs already incurred in defending the claims brought by Mr. Rule, Mr. Webster and other CNI customers based on CNI's alleged violations of applicable state laws, but also for any and all future fees, expenses and costs, including any amounts paid as a result of settlements or judgments. CNI denies these contentions. Accordingly, FDR is entitled to a judicial declaration that it is entitled to indemnification from CNI for all such amounts.

1 29. Furthermore, as detailed above, CNI and its insurer, Tudor, have taken the position
2 that FDR is obligated to indemnify CNI under the Agreement for the claims asserted by CNI
3 customers alleging violations of Ohio and Washington law. FDR denies that contention, and
4 asserts that its indemnification obligations under the Agreement are not implicated in any way by
5 the claims asserted by Mr. Rule, Mr. Webster or any other CNI customers. Accordingly, FDR is
6 entitled to a judicial declaration that it has no obligation under the Agreement to indemnify CNI
7 for such claims.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, FDR prays for judgment against CNI as follows:

10 A. For compensatory damages according to proof, exceeding seventy-five thousand
11 dollars (\$75,000);

12 B. For a declaration and order that FDR is entitled to be indemnified by CNI under
13 the Agreement for all amounts that incurred in defending the claims brought by CNI customers
14 based on CNI's alleged violations of applicable state laws, including all amounts that may be
15 incurred in the future and any and all amounts paid as a result of settlements or judgments in such
16 actions;

17 C. For a declaration and order that FDR has no obligation to indemnify CNI under the
18 Agreement for any amounts incurred in defending claims brought by CNI customers;

19 D. For costs of suit, including reasonable attorneys' fees; and

20 E. For such other different and further relief as the Court deems just and proper.

21
22 Dated: May 16, 2012

FENWICK & WEST LLP

23
24 By 
Kevin P. Muck

25 Attorneys for Plaintiff Freedom Debt Relief, LLC
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FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

DEMAND FOR JURY TRIAL

Plaintiff Freedom Debt Relief, LLC hereby demands a jury trial on all issues so triable.

Dated: May 16, 2012

FENWICK & WEST LLP

By  _____
Kevin P. Muck

Attorneys for Plaintiff Freedom Debt Relief, LLC

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FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

From Article at GetOutOfDebt.org

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CLIENT SERVICING AGREEMENT

THIS AGREEMENT is made on November 16th, 2004 between Century Negotiations, Inc. (CNI) and the Financial Debt Relief (FDR) with regard to the following:

- 1) Both CNI and FDR are in the business of providing debt settlement services to the general public.
- 2) FDR wishes to continue soliciting members of the general public who require debt settlement services, and wishes to enroll a portion of its leads into contracts for debt settlement services with CNI for all servicing requirements.
- 3) CNI wishes to accept the assignment of contracts with the general public for the purpose of providing debt settlement services.

Therefore, CNI and FDR agree as follows:

- 1) **Assignment of Contracts:** During the period of this Agreement, CNI will be the sole outsourcing agent for debt negotiation on contracts assigned by FDR. FDR agrees that it will assign clients to be outsourced to CNI for negotiation of debt relief for the total debt load and not in part thereof.
- 2) **Scope of Services:** CNI services will include negotiation of client debts, customer service and all correspondence with creditors, and the preparation of all paperwork generally necessary in debt servicing arrangements. CNI agrees to include for each client all consumer advocacy functions through Partners for Fair Debt Collections, the monthly newsletter, and all other agreed upon educational materials provided by the Premier Institute for Financial Freedom. CNI will provide weekly reporting to FDR, on clients enrolled with CNI by FDR; CNI will notify FDR of changes in client status, including termination and graduation from the CNI debt relief program.

CNI shall service Clients only in accordance with the covenants as set forth in this Agreement and shall not offer any other products or services to Clients, unless such products and services are provided by FDR and its network of affiliates. If, after being given the opportunity to provide a product or service to a Client, FDR and its affiliates choose not to provide that product or service, then CNI may refer that Client to another provider for that particular product or service. CNI shall not use Client information for any other purposes whatsoever except to fulfill the terms of this Agreement and shall not disclose Client lists or information to any other person without the prior written consent of FDR. CNI shall service Clients in accordance with this Agreement consistent with commercially reasonable standards in the debt management industry.
- 3) **Approval of Assigned Contracts:** CNI shall have four (4) business days from the receipt of completed client information to recommend approval or disapproval of any contract entered into between FDR and members of the general public for debt servicing. Approval or non-approval shall be communicated by facsimile from CNI to FDR by email or fax.

- 4) **Form of Documents:** The "client contract" for debt servicing shall be in the form supplied by FDR and approved by CNI
- 5) **Mutual Responsibilities:** The parties agree that a significant amount of coordination and interface will be required to successfully implement the objectives covered by this Agreement. Therefore, the parties agree to cooperate fully with each other to achieve operational efficiency and harmony in the areas of data transfer, designing mutually acceptable forms, records and data storage elements and a coordinated, effective complaint resolution procedure.
- 6) **Client Cancellation:** If a client terminates its debt settlement agreement with CNI for any reason whatsoever, such client may be due a refund of fees. Such fees shall be refunded in the following order in proportion to the amount of fees allocated to CNI and FDR: Monthly maintenance fee previously collected; Retainer fee previously collected.
- 7) **Term and Termination:** This agreement shall continue in effect for a period of one (1) year from the date of execution, and month to month following that term. Any extensions of this agreement shall be subject to renegotiation of the contract terms.

FDR may terminate this Agreement for any reason with no less than thirty (30) days written notice.

In the event of termination, CNI agrees that it shall continue to faithfully perform all services to Customers of FDR that have paid any fee or charge for debt settlement or debt resolution services. In addition, any and all service revenues, fees or payments of any kind owing to FDR by CNI for services rendered by FDR shall continue to be paid in accordance with Section 8.

- 8) **Compensation: Reporting:** Parties agree to use NoteWorld for the debiting of client funds, maintenance of the client settlement reserve account and the payment of earnings to Parties. Earnings for FDR and CNI will be as follows:
 - i) 5% Retainer fee. CNI earns \$150.00 for each enrollment that is accepted into CNI's settlement program. The remaining enrollment fee is earned by FDR.
 - ii) 10% Service fee. CNI earns 65% of the monthly Service Fee per client. The remaining Service Fee is earned by FDR.

FDR will get a weekly report of active clients, and fees due, from CNI.

- 9) **Indemnification:** FDR, upon sale of any debt servicing contract assigned to CNI, agrees to indemnify, defend and hold harmless CNI and its shareholders, directors, officers, trustees, agents, employees, successors and assigns from any and all claims, liability or loss, whatsoever, including, without limitation, damages, penalties, fines, taxes, costs, expenses and attorneys' fees arising out of, or in connection with, any breach of any representation, warranty or obligation of FDR contained in this agreement, any negligent or willful act or omission by FDR in the performance of its obligations under this Agreement; or, any violation by FDR of any federal, state or local law or regulation pertaining to the activities contemplated by this Agreement. All rights and remedies provided in this Agreement to CNI

shall inure to the benefit of CNI, its successors and assigns, and any assignee of, or participant, in any debt servicing agreement, and shall survive the termination of this Agreement.

CNI must indemnify, defend and hold harmless FDR, Freedom owners (including Freedom Financial Network), agents, employees, officers and directors, from any and all liability, claims, actions, demands, proceedings, lawsuits or damages, and all expenses related thereto, including reasonable attorneys fees and court costs, incurred as a result of the negligence or acts or omissions of CNI or its agents, employees or independent contractors or breach of CNI's obligations under this Agreement or arising from a violation of federal, state or local laws caused as a result of the process established by CNI for performing services under this Agreement. This indemnity obligation will continue in full effect even after the termination of this Agreement. FDR will notify CNI of any claims either asserted, contemplated, or filed against FDR subject to this Section and CNI will be given the opportunity to assume the defense of the matter. If CNI fails to assume the defense, FDR may defend the action in the manner it deems appropriate and CNI must pay FDR for all costs, including reasonable attorneys' fees, incurred by FDR in defending the action, in addition to any sum that FDR pays by reason of any settlement or judgment against FDR in the action. FDR's right to indemnity under this Agreement will arise and be valid notwithstanding that joint or concurrent liability may be imposed on FDR by statute, ordinance, regulation or other law.

- 10) Solicitation: CNI agrees not to solicit FDR clients for any additional financial management services in general, and specifically, any mortgage or credit enhancement related products unless approved in writing by FDR.
- 11) Confidentiality: All sales, functionality, strategy, documentation, resources, marketing programs, and other operational information, will be considered confidential by and between both CNI and FDR.
- 12) Solicitation of Customers After Termination:
- i) The parties hereto acknowledge and agree that the names and addresses of FDR and CNI customers constitute trade secrets of the respective parties and that the sale or unauthorized use or disclosure of any of the other party's trade secrets obtained during the course of this Agreement, would constitute unfair competition. Both parties further acknowledge that the other party's employees and/or agents are valuable assets to the operation of their respective businesses. The parties therefore promise and agree, with one and the other, not to engage in any unfair competition or solicitation of the other's employees.
 - ii) For a period of one (1) year immediately following the termination of this Agreement, the parties hereto agree that employees and/or agents of the other party shall not directly or indirectly make known to any person, firm or corporation, the names or addresses of any of the customers of the other party or any other information pertaining to them. In addition, neither party will call upon, solicit, take away, or attempt to call on, employees or agents of the other party with whom they have become acquainted during the term of this Agreement.

- 13) **Governing Law:** This Agreement shall be governed by the laws of the State of California. The parties hereto expressly agree that venue for any and all claims, lawsuits or disputes, arising out of, or in any matter related to this Agreement, the relationship created by this Agreement, or any debt servicing agreement purchased by CNI from FDR pursuant to this Agreement, shall be in a court of competent jurisdiction in San Francisco, CA.
- 14) **Attorney's Fees:** If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees and other costs incurred in that action or proceeding in addition to any other relief to which it or they may be entitled.
- 15) **Assignment:** Neither party may assign this agreement.
- 16) **Entire Agreement; Amendment:** This Agreement constitutes the entire Agreement between the parties and supercedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification or amendment shall be binding unless executed in writing by both parties.
- 17) **Partial Invalidity:** If any provision of this Agreement is held to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.
- 18) **Address for Notices:** Any notices required by this Agreement shall be directed as follows:

Century Negotiations, Inc
 1061 Main Street
 North Huntingdon, PA 15642

Freedom Debt Relief
 1875 South Grant Street Suite 400
 San Mateo, CA 94402

This Agreement is executed on the date set forth hereinabove.

Century Negotiations Inc.

By Marie Claycomb

Marie Claycomb
 President

Freedom Debt Relief

By Andrew Houser

Andrew Houser
 Founder and Co-CEO