

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.
1884CV01472-BLS1

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

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

Defendants.

**FIRST AMENDED
COMPLAINT**

MICHAEL J. DONOVAN
CLERK OF COURT
SUFFOLK SUPERIOR COURT

2019 NOV 21 P 2:21

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

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.

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.*",¹
- "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

¹ 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”;
- “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”;
- “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 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.

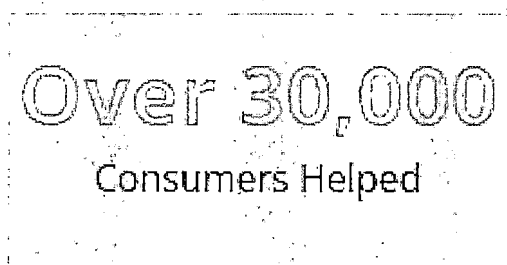
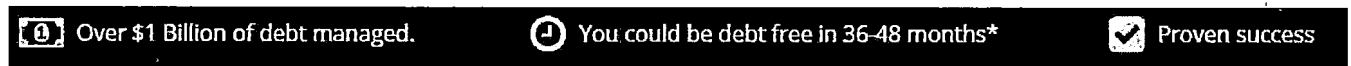
The 2019 Website

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:



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.

² 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*³” 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.

³ 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 then [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 than 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).

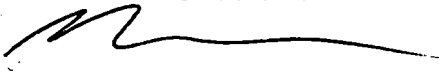
RELIEF REQUESTED

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


Max Weinstein (BBO #600982)
Chief, Consumer Protection Division
Yael Shavit (BBO #695333)
Assistant Attorney General
One Ashburton Place
Boston, MA 02108
Telephone (Shavit): (617) 963-2197

Telephone (Weinstein): (617) 963-2499
Email: Yael.Shavit@mass.gov
Email: Max.Weinstein@mass.gov

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