

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Bureau of Consumer Financial
Protection,

Plaintiff,

v.

DMB Financial, LLC,

Defendant.

Case No. 1:20-cv-12147

**[PROPOSED] STIPULATED
FINAL JUDGMENT AND
ORDER**

The Bureau of Consumer Financial Protection (Bureau) commenced this civil action on December 1, 2020 to obtain injunctive and monetary relief and civil penalties, from DMB Financial, LLC. The Complaint alleges violations of the Telemarketing Sales Rule (TSR), 16 C.F.R. pt. 310 and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a), in connection with Defendant's marketing and sale of Debt-Relief Services.

The Bureau and Defendant agree to entry of this Stipulated Final Judgment and Order (Order), without adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint.

FINDINGS

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Defendant neither admits nor denies the allegations in the Complaint, except as specified in this Order. For purposes of this Order, Defendant admits the facts necessary to establish the Court's jurisdiction over it and the subject matter of this action.
3. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order and any claim it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each Party agrees to bear its own costs and expenses, including, without limitation, attorneys' fees.
4. Entry of this Order is in the public interest.

DEFINITIONS

5. The following definitions apply to this Order:
 - a. "**Affected Consumers**" includes any person who paid Defendant a fee under the Specified Fee-Charging Practices during the Relevant Period.

- b. “**Assist Others**” includes, but is not limited to:
- i. consulting in any form whatsoever;
 - ii. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including but not limited to, any telephone sales script, direct mail solicitation, or the text of any Internet website, email, or other electronic communication or advertisement;
 - iii. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
 - iv. providing names of, or assisting in the generation of, potential customers;
 - v. performing marketing, billing, or payment services of any kind; and
 - vi. acting or serving as an owner, officer, director, manager, or principal of any entity.

- c. **“Clearly and Conspicuously”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in the following ways:
- i. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
 - ii. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
 - iii. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed,

and cadence sufficient for ordinary consumers to easily hear and understand it.

- iv. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
- v. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
- vi. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
- vii. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
- viii. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

d. **“Consumer Financial Product or Service”** is

synonymous in meaning and equal in scope to the definition of the term, as of the Effective Date, in § 1002(5) of the CFPA, 12 U.S.C. § 5481(5), and subject to applicable restrictions contained in the CFPA, includes, but is not limited to:

- i. extending credit and servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);
- ii. providing financial-advisory services to consumers on individual financial matters or relating to proprietary financial products or services, including providing credit counseling to any consumer or providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;
- iii. collecting, analyzing, maintaining, or providing consumer report information or other account

information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a Consumer Financial Product or Service; or

- iv. collecting debt related to any Consumer Financial Product or Service.
- e. “**Creditor**” means the original or current creditor as well as such original or current creditor’s agent or attorney, including any collection agent, collection attorney, or third-party collector, as well as any other entity holding a consumer’s Enrolled Debt, such as a debt buyer, and that entity’s agent, attorney, collection agent, collection attorney, or third-party collector.
- f. “**Debt-Relief Service**” means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt or obligation, including, but not limited to a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector.

- g. “**Debt Settlement and Negotiation Services Agreement**” means Defendant’s contract with a consumer for the provision of Debt-Relief Services.
- h. “**Defendant**” means DMB Financial, LLC and its successors and assigns.
- i. “**Effective Date**” means the date on which the Order is entered on the docket.
- j. “**Enforcement Director**” means the Assistant Director of the Office of Enforcement for the Bureau of Consumer Financial Protection, or his or her delegate.
- k. “**Enrolled Debt**” means a consumer debt that Defendant agreed to negotiate for a fee under a Debt Settlement and Negotiation Services Agreement and that the consumer has not withdrawn from the Defendant’s services.
- l. “**Insurance Agreement**” means the Confidential Settlement Agreement and Release between Defendant and Maxum Casualty Insurance Company dated on or about May 17, 2021.
- m. “**Refund**” means a payment in the form of a cash refund for a fee paid under the Specified Fee-Charging Practices.

- n. “**Related Consumer Action**” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Defendant based on substantially the same facts as described in the Complaint.
- o. “**Relevant Period**” includes the period from January 1, 2015, to the Effective Date.
- p. “**Specified Fee-Charging Practices**” refers to the following conduct during the Relevant Period:
 - i. requesting or receiving fees from consumers in the absence of a settlement with the Creditor;
 - ii. requesting or receiving advance fees before consumers made a first payment to a Creditor under a settlement agreement; and
 - iii. requesting or receiving fees calculated using any debt amount other than the debt amount at the time of enrollment.
- q. “**Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more

telephones and which involves more than one interstate phone call.

CONDUCT PROVISIONS

I

Prohibition on Charging Unlawful Settlement Fees

IT IS ORDERED that:

6. Defendant and its officers, agents, servants, employees, and attorneys who have actual notice of this Order, and all other persons in active concert or participation with them who have actual notice of this Order, whether acting directly or indirectly, in connection with the marketing and sale of Debt-Relief Services, may not request or receive a fee, or Assist Others in requesting or receiving a fee, that violates the TSR's prohibition on abusive acts or practices in Telemarketing, including by:
 - a. requesting or receiving advance fees under 16 C.F.R. § 310.4(a)(5)(i)(B);
 - b. requesting or receiving fees that are calculated based on the debt amount after the time of enrollment under 16 C.F.R. § 310.4(a)(5)(i)(C); and
 - c. requesting or receiving fees in the absence of a settlement with the Creditor under 16 C.F.R. § 310.4(a)(5)(i).

II

Prohibition on Deceptive Practices

IT IS FURTHER ORDERED that:

7. Defendant and its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who have actual notice of this Order, whether acting directly or indirectly, in connection with sale or offering of Debt-Relief Services or Telemarketing any Consumer Financial Product or Service, may not misrepresent, or Assist Others in misrepresenting, expressly or impliedly:

- a. the circumstances in which Defendant may request or receive fees from consumers;
- b. how Defendant determines fees requested or received from a consumer;
- c. the identity and nature of Defendant and its affiliates' business; and
- d. any other fact material to consumers such as: the total costs, benefits to consumers including savings, financial consequences, effects on consumers' credit, and any restrictions, limitations, or conditions.

III

Prohibition on Obtaining Consumers' Credit Reports

IT IS FURTHER ORDERED that:

8. Defendant and its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who have actual notice of this Order, whether acting directly or indirectly, in connection with sale or offering of Debt-Relief Services or Telemarketing any Consumer Financial Product or Service, may not use or obtain a consumer's credit report unless the credit report is obtained for a purpose for which it is authorized to be furnished under the Fair Credit Reporting Act.

IV

Required Disclosures in Enrollment Agreements

IT IS FURTHER ORDERED that:

9. Defendant and its officers, agents, servants, employees, and attorneys, and all other person in active concert or participation with them who have actual notice of this Order, whether acting directly or indirectly, must, before Enrollment, Clearly and Conspicuously disclose to consumers:

- a. the time by which Defendant will make a bona fide settlement offer to each Creditor or debt collector under 16 C.F.R. § 310.3(a)(1)(viii)(A); and
- b. the amount of money or the percentage of each outstanding debt that the customer must accumulate before Defendant will make a bona fide settlement offer to each Creditor or debt collector under 16 C.F.R. § 310.3(a)(1)(viii)(B).

V

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

10. Defendant must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Defendant must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

VI

Customer Information

IT IS FURTHER ORDERED that:

11. Defendant, and its officers, agents, servants, employees, and attorneys and all other persons in active concert or participation with any of

them, who receive actual notice of this Order, whether acting directly or indirectly, may not:

- a. disclose, use, or benefit from customer information, including names, addresses, telephone numbers, email addresses, social security numbers, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that Defendant obtained before the Effective Date in connection with its Debt-Relief Services;
- b. attempt to collect, sell, assign, or otherwise transfer any right to collect payment from any consumer who purchased or agreed to purchase Debt-Relief Services from Defendant.

However, customer information may be disclosed if requested by a government agency or required by law, regulation, or court order.

MONETARY PROVISIONS

VII

Order to Pay Redress

IT IS FURTHER ORDERED that:

12. A judgment for monetary relief is entered in favor of the Bureau and against the Defendant in the amount of \$7,700,000 for the purpose of

providing redress to Affected Consumers; however, full payment of this judgment will be suspended upon satisfaction of the obligations in Paragraphs 12 through 17 of this Section and Paragraphs 26 through 30 of Section X and subject to Section VIII of this Order.

13. Defendant must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, \$5,400,000 in partial satisfaction of the judgment as ordered in Paragraph 12 of this Section according to the following schedule:

- a. \$2,250,000 within 40 days of the Effective Date;
- b. \$2,850,000 within 244 days of the Effective Date; and
- c. \$300,000 within 365 days of the Effective Date.

Notwithstanding Paragraph 14, below, Defendant may use up to \$1,000,000 in accordance with the Insurance Agreement to meet its obligation in subpart (a), above. Moreover, Defendant may meet its obligations under this Paragraph by demonstrating to the Bureau, at least 10 days before the scheduled payment date, that it has previously made Refunds to Affected Consumers.

14. With regard to any redress that Defendant pays under this Section, except for up to \$1,000,000 of the redress that Defendant must pay under Paragraph 13(a), as provided above, if Defendant receives,

directly or indirectly, any reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, or if Defendant secures a tax deduction or tax credit with regard to any federal, state, or local tax, Defendant must: (a) immediately notify the Enforcement Director in writing, and (b) within ten (10) days of receiving the funds or monetary benefit, Defendant must transfer to the Bureau the full amount of such funds or monetary benefit (Additional Payment) to the Bureau or to the Bureau's agent according to the Bureau's wiring instructions. After the Bureau receives the Additional Payment, the amount of the suspended judgment referenced in Paragraph 12 will be reduced by the amount of the Additional Payment and the Additional Payment will be applied toward satisfaction of the monetary judgment entered in Paragraph 12.

15. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including, but not limited to, refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.

16. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after the administration of redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Defendant will have no right to challenge the Bureau's choice of remedies under this Section and will have no right to contest the manner of distribution chosen by the Bureau.

17. Payment of redress to any Affected Consumer under this Order may not be conditioned on that Affected Consumer waiving any right.

VIII

Effect of Misrepresentation or Omission Regarding Financial Condition

IT IS FURTHER ORDERED that:

18. The suspension of the monetary judgment entered in Section VII of this Order is expressly premised on the truthfulness, accuracy, and completeness of Defendant's financial statements and supporting documents submitted to the Bureau on or about March 11, 2021, and May 17, 2021, which Defendant asserts are truthful, accurate, and complete and include: (a) the Financial Statements of DMB Financial, LLC, including the attachments, signed on January 21, 2021, and submitted to the Bureau on or about March 11, 2021; and (b) the Insurance Agreement.

19. If upon motion by the Bureau, the Court determines that Defendant has failed to disclose any material asset or that any of its financial statements or oral testimony contain any material misrepresentation or omission, including materially misstating the value of any asset, the Court shall terminate the suspension of the monetary judgment entered in Section VII and without further adjudication, shall reinstate the monetary judgment and the full judgment of \$7,700,000 shall be immediately due and payable, less any amounts paid to the Bureau under Section VII of this Order.

20. If the Court terminates the suspension of the monetary judgment under this Section, the Bureau will be entitled to interest on the judgment, computed from the date of entry of this Order, at the rate prescribed by 28 U.S.C. § 1961, as amended, on any outstanding amounts not paid.

21. Provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, provided further, that proceedings instituted under this provision would be in addition to, and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings that the Bureau may initiate to enforce this Order.

IX

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

22. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint and continuing until the Effective Date, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Defendant must pay a civil money penalty of \$1 to the Bureau. This nominal penalty is based on Defendant's limited ability to pay as attested to in its financial statements listed in Section VIII above.

23. Within 10 days of the Effective Date, Defendant must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

24. The civil money penalty paid under this Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

25. Defendant must treat the civil money penalty paid under this Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Defendant may not:

- a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Order; or
- b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Order.

X

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

26. In the event of any default on Defendant's obligations to make payment under this Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

27. Defendant relinquishes all dominion, control, and title to the funds paid under this Order to the fullest extent permitted by law and no part of the funds may be returned to Defendant.

28. The facts alleged in the Complaint will be taken as true and be given collateral estoppel effect, without further proof, in any proceeding

based on the entry of the Order, or in any subsequent civil litigation by or on behalf of the Bureau, including in a proceeding to enforce its rights to any payment or monetary judgment under this Order, such as a nondischargeability complaint in any bankruptcy case.

29. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Bureau under § 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect against Defendant, even in Defendant's capacity as debtor-in-possession.

30. Under 31 U.S.C. § 7701, Defendant, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

31. Within 30 days of the entry of a final judgment, order, or settlement in a Related Consumer Action, Defendant must notify the Enforcement Director of the final judgment, order, or settlement in writing. That notification must indicate the amount of redress, if any, that Defendant paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid. To preserve the deterrent effect of the civil money penalty in any

Related Consumer Action, Defendant may not argue that Defendant is entitled to, nor may Defendant benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Defendant based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Defendant must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

COMPLIANCE PROVISIONS

XI

Reporting Requirements

IT IS FURTHER ORDERED that:

32. Defendant must notify the Bureau of any development that may affect compliance obligations arising under this Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that

would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of any bankruptcy or insolvency proceeding by or against Defendant; or a change in Defendant's name or address. Defendant must provide this notice at least 30 days before the development or as soon as practicable after the learning about the development, whichever is sooner.

33. Within 7 days of the Effective Date, Defendant must:
 - a. designate at least one telephone number and email, physical, and postal addresses as points of contact that the Bureau may use to communicate with Defendant;
 - b. identify all businesses for which Defendant is the majority owner, or that Defendant directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; and
 - c. describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.

34. Defendant must report any change in the information required to be submitted under Paragraph 33 at least 30 days before the change or as soon as practicable after learning about the change, whichever is sooner.

35. Within 90 days of the Effective Date, and again one year after the Effective Date, Defendant must submit to the Enforcement Director an accurate written compliance progress report sworn to under penalty of perjury (Compliance Report), which, at a minimum:

- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Defendant has complied with each such paragraph and subparagraph of this Order; and
- b. attaches a copy of each Order Acknowledgment obtained under Section XII, unless previously submitted to the Bureau.

XII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

36. Within 7 days of the Effective Date, Defendant must submit to the Enforcement Director an acknowledgment of receipt of this Order, sworn under penalty of perjury.

37. Within 30 days of the Effective Date, Defendant must deliver a copy of this Order to each of its executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Order.

38. For 5 years from the Effective Date, Defendant must deliver a copy of this Order to any business entity resulting from any change in structure referred to in Section XI, any future executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Order before they assume their responsibilities.

39. Defendant must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. §§ 7001-7006, within 30 days of delivery, from all persons receiving a copy of this Order under this Section.

40. Within 90 days of the Effective Date, Defendant must provide the Bureau with a list of all persons and their titles to whom this Order was delivered through that date under Paragraphs 37 and 38 and a copy of all

signed and dated statements acknowledging of receipt of this Order under Paragraph 39.

XIII

Recordkeeping

IT IS FURTHER ORDERED that:

41. Defendant must create, for at least 10 years from the Effective Date, all documents and records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Bureau. Defendant must retain these documents for at least 10 years after creation and make them available to the Bureau upon the Bureau's request.

42. Defendant must maintain, for at least 10 years from the Effective Date or 10 years after creation, whichever is longer:

- a. copies of all sales scripts; training materials; advertisements; websites; and other marketing materials, including any such materials used by a third party on Defendant's behalf;
- b. for each individual Affected Consumer: the consumer's name, address, phone number, email address; amount paid, description of the Debt-Relief Service purchased, the date on which the Debt-Relief Service was purchased, a copy of the consumer's Debt Settlement and Negotiation Services

Agreement, a copy of any promotional or welcome materials provided, and, if applicable, the date and reason the consumer left the program;

- c. accounting records showing the gross and net revenues generated by the Debt-Relief Services;
- d. all consumer complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests;
- e. records showing, for each employee providing Debt-Relief Services, that person's: name; telephone number; email, physical, and postal address; job title or position; dates of service; and, if applicable, the reason for termination; and
- f. records showing, for each service provider providing services related to Debt-Relief Services, the name of a point of contact, and that person's telephone number; email, physical, and postal address; job title or position; dates of service; and, if applicable, the reason for termination.

Defendant must make these materials available to the Bureau upon the Bureau's request.

XIV

Notices

IT IS FURTHER ORDERED that:

43. Unless otherwise directed in writing by the Bureau, Defendant must provide all submissions, requests, communications, or other documents relating to this Order in writing, with the subject line, “BCFP v. DMB Financial, LLC, Case No.1:20-cv-12147-RGS,” and send them by overnight courier or first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XV

Compliance Monitoring

IT IS FURTHER ORDERED that:

44. Within 14 days of receipt of a written request from the Bureau, Defendant must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; provide sworn testimony; or produce documents.

45. Defendant must permit Bureau representatives to interview any employee or other person affiliated with Defendant who has agreed to such an interview regarding (a) this matter; (b) anything related to or associated with the conduct described the Complaint; or (c) compliance with this Order. The person interviewed may have counsel present.

46. Nothing in this Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6.

XVI

Retention of Jurisdiction

IT IS FURTHER ORDERED that:

47. The Court will retain jurisdiction of this matter for the purpose of enforcing this Order.

IT IS SO ORDERED.

DATED this ____ day of May, 2021.

Hon. Richard G. Stearns
United States District Judge