

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil  
(Consumer Protection)

Court File No. \_\_\_\_\_

In the Matter of Direct Account Management.

**ASSURANCE OF  
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minn. Stat. § 8.31, subd. 2b, between the State of Minnesota, through its Attorney General, Keith Ellison, and Direct Account Management;

WHEREAS, the Attorney General of the State of Minnesota has authority to enforce Minnesota’s laws relating to unfair, discriminatory, and other unlawful practices in business, commerce, or trade, including but not limited to the Minnesota’s Debt Settlement Services Act, Minn. Stat. §§ 332B.03-.12, the Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69, *et seq.*, and the Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;

WHEREAS, the Attorney General alleges that Direct Account Management marketed, sold, and provided goods or services to Minnesota consumers related to the repayment of student loans;

WHEREAS, the Attorney General alleges that Direct Account Management, without first becoming registered with Minnesota’s Department of Commerce as required by Minn. Stat. § 332B.03, offered to provide advice, or offered to act or acted as an intermediary between Minnesota consumers and the U.S. Department of Education or its federal student loan servicers, where the primary purpose of the advice or action was to reduce or eliminate student loan debt;

WHEREAS, the Attorney General alleges that Direct Account Management performed for Minnesota consumers, and imposed charges or received payment from Minnesota consumers for, debt settlement services without first executing written debt settlement services agreements that complied with Minn. Stat. § 332B, as required by Minn. Stat. § 332B.06, and without first performing all of the services it agreed to perform, as required by Minn. Stat. § 332B.09;

WHEREAS, the Attorney General alleges that Direct Account Management misrepresented its services or created the likelihood of consumer confusion or misunderstanding regarding its services in its dealings with Minnesota consumers in violation of Minn. Stat. §§ 332B.11, 325F.69, and 325D.44;

WHEREAS, the Attorney General alleges that the above-described alleged conduct violates Minn. Stat. §§ 332B.03-.12, 325F.69, and 325D.44;

WHEREAS, the Attorney General and Direct Account Management (collectively, the “Parties”) desire to resolve fully this matter by Assurance;

WHEREAS, Direct Account Management denies the Attorney General’s allegations, and pursuant to Minnesota Statutes section 8.31, subd. 2b, “[a]n assurance shall not be considered an admission of a violation for any purpose;”

NOW THEREFORE, the Attorney General and Direct Account Management hereby agree to entry of an order with the following terms and conditions:

### **REPRESENTATIONS**

1. On February 9, 2023, Direct Account Management provided the Attorney General with a sworn affidavit attaching a list of Minnesota consumers with whom Direct Account Management contracted, along with the amount of payments Direct Account Management collected from each Minnesota consumer on the list.

2. Direct Account Management represents and warrants that the Minnesota consumer list is a complete and accurate list of all Minnesota consumers with whom Direct Account Management has contracted, and that the payment amounts are accurate.

3. The Attorney General relies upon Direct Account Management's representations and warranties in its investigation and resolution of this matter.

### **INJUNCTIVE RELIEF**

4. Direct Account Management, including its principals, officers, directors, employees, independent contractors, affiliates, subsidiaries, and successors, as well as other persons in active concert or participation with Direct Account Management (including any agents or affiliates who may have acted on its behalf or who may act on its behalf in the future) who receive actual notice of this order, shall comply with the following permanent injunctive terms and provisions:

- a. Without first becoming registered with Minnesota's Department of Commerce as required by Minn. Stat. § 332B.03, Direct Account Management shall not hereinafter conduct any business, directly or indirectly, individually or in conjunction with any other person or entity, in the State of Minnesota, including but not limited to collecting payments, marketing, selling, and providing goods or services related to repayment of student loans, including but not limited to completion of application materials for student loan consolidation or repayment plans.
- b. Direct Account Management shall fulfill the terms of this Assurance, and all of its parents, subsidiaries, and successors shall be bound by this Assurance as if they had signed this Assurance, so as to accomplish the full relief contemplated by this Assurance. Direct Account Management shall not affect any change in its form of

doing business, organizational identity, organizational structure, affiliations, ownership, or management composition as a method or means of attempting to avoid the requirements of this Assurance.

### **MONETARY PAYMENT**

5. Direct Account Management shall pay to the Attorney General the sum of \$20,063.12 (the “Settlement Sum”) pursuant to Minn. Stat. § 8.31, no later than ten (10) days after the date on which the Court signs this Assurance. Monies from the Settlement Sum may be used for settlement administration expenses, including payment to a settlement administrator.

6. All of the Settlement Sum constitutes restitution, which may be distributed to consumers by the Attorney General in his sole discretion pursuant to Minn. Stat. § 8.31.

7. If, after execution of this Assurance, the Attorney General learns that Direct Account Management imposed charges or received payment from additional Minnesota consumers not previously disclosed to the Attorney General, the Attorney General shall provide Direct Account Management written notice of this violation pursuant to Paragraph 31 and give Direct Account Management ten (10) business days to cure this violation.

8. If Direct Account Management fails to pay the Settlement Sum as provided in Paragraph 5, the Attorney General shall provide Direct Account Management written notice of this violation pursuant to Paragraph 31 and give Direct Account Management ten (10) business days to cure this violation. Failure to comply with Paragraph 5 in any respect shall be a violation of the Assurance for the purposes of Paragraph 9.

### **STAYED CIVIL PENALTY**

9. Direct Account Management shall pay a stayed civil penalty of \$10,000.00 to the Attorney General upon application to the Court, with an opportunity for Direct Account Management to respond to such application, and a finding by the Court indicating that Direct

Account Management has violated any of the terms of this Assurance and Order, or failed to provide the Attorney General with an accurate and complete list of Minnesota consumers with whom Direct Account Management contracted for the provision of goods or services related to repayment of student loans. Inadvertent failure to provide such a list shall not trigger the application of this Paragraph, as long as Direct Account Management promptly cures such failure pursuant to this Assurance. The release in Paragraph 13 does not prevent the Attorney General from moving for, or collecting, the stayed civil penalty described in this Paragraph.

### **DEFINITIONS**

10. “Direct Account Management” means Direct Account Management, and all of its merged or acquired predecessors, successors, divisions, subsidiaries, and parents. The term “Direct Account Management” also includes all present directors, officers, employees, and other agents of Direct Account Management.

11. “Minnesota consumer” means any person with a Minnesota mailing address.

### **GENERAL TERMS**

12. Nothing in this Assurance shall relieve Direct Account Management of its obligation to comply with all applicable Minnesota and federal laws and regulations.

13. In consideration of the stipulated relief and contingent upon the Court’s entry of this Assurance, the Attorney General, by execution of this Assurance, hereby fully and completely releases Direct Account Management of any and all claims of the Attorney General under Minn. Stat. §§ 332B.03-.12, 325F.69, and 325D.44, connected with or arising out of the allegations contained in this Assurance, up to and including the date of this Assurance. The Attorney General through this Assurance does not settle, release, or resolve any claim against Direct Account Management or any other person or entity involving any private causes of action, claims, and remedies, including, but not limited to, private causes of action, claims, or remedies provided for

under Minn. Stat. § 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division.

14. Direct Account Management reserves all defenses in any other matter, including any private causes of action.

15. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

16. The person signing this Assurance for Direct Account Management warrants that Direct Account Management has authorized the person to execute this Assurance, that Direct Account Management has been fully advised by its counsel before entering into the Assurance, and that he or she executes this Assurance in an official capacity that binds Direct Account Management and its successors.

17. This Assurance constitutes the full and complete terms of the agreement entered into by Direct Account Management and the Attorney General.

18. The Parties agree that this Assurance, including any issues related to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

19. The Ramsey County District Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance. The Attorney General may make such application as appropriate to enforce or interpret the provisions of this Assurance or, in the alternative, maintain any action within his legal authority for such other and further relief as he determines is proper and necessary for the enforcement of this Assurance. The parties agree that, in any action brought by the Attorney General to enforce the terms of this Assurance, the Court shall have the authority to award equitable relief, including specific performance.

20. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

21. Nothing in this Assurance shall be construed to limit the power or authority of the State of Minnesota or the Attorney General except as expressly set forth herein.

22. Each of the parties is represented by counsel, participated in the drafting of this Assurance, and agrees that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

23. Each party shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance.

24. The facts alleged in this Assurance will be taken as true without further proof for the purposes of determining the nondischargeability of the State's monetary judgment, as ordered by this Assurance, in any bankruptcy proceeding.

25. Direct Account Management understands that if a Court of competent jurisdiction holds that Direct Account Management has committed a violation of this Assurance, that such violation may be enforced through contempt proceedings under Minn. Stat. § 8.31, subdivision 2b, and that the Attorney General may thereafter, in his sole discretion, initiate legal proceedings against Direct Account Management for contempt and/or the Stayed Civil Penalty in Paragraph 9.

26. Direct Account Management agrees that the Stayed Civil Penalty in Paragraph 9 of this Assurance, if imposed by any court, represents a civil penalty owed to the State of Minnesota, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

27. On or before executing this Assurance, Direct Account Management shall provide the Attorney General its taxpayer identification number (TIN). Direct Account Management understands that it may be subject to a penalty if it fails to provide the Attorney General with its

TIN pursuant to 26 C.F.R. 6723, 26 C.F.R. 6724(d)(3), and 26 C.F.R. 301.6723-1. Direct Account Management shall also cooperate in the Attorney General's Office's completion of Internal Revenue Service Form 1098-F by providing the Attorney General by November 1, 2023, any additional necessary information requested by the Attorney General's Office.

28. Direct Account Management shall notify its principals, officers, directors, agents, employees, affiliates, subsidiaries, and successors, and any other person in active concert or participation with the company of the obligations, duties, and responsibilities imposed on them by this Assurance.

29. Direct Account Management shall not state or imply, directly or indirectly, that the State of Minnesota or the Attorney General have approved of, condoned, or agree with any conduct or actions by Direct Account Management.

30. Direct Account Management agrees that the Attorney General, without further notice to Direct Account Management, may file this Assurance with the Ramsey County District Court on an *ex parte* basis, and that the Court may issue the Order below without further proceedings.

31. Service of notices required by this Assurance shall be served on the following persons, or any person subsequently designated by the parties to receive such notices:

Evan Romanoff, Assistant Attorney General  
Office of the Minnesota Attorney General  
evan.romanoff@ag.state.mn.us  
445 Minnesota Street, Suite 1200  
St. Paul, Minnesota 55101

Direct Account Management  
c/o Nicholas A. Boylan, Esq.  
Law Offices of Nicholas A. Boylan  
nablawfirm@gmail.com  
315 S. Coast Hwy 101, Suite U, Box 55  
Encinitas, CA 92024



KEITH ELLISON  
Attorney General  
State of Minnesota

Date: February 10, 2023

By: /s/ **Evan Romanoff**  
EVAN ROMANOFF  
Assistant Attorney General

DIRECT ACCOUNT MANAGEMENT

Date: 02/09/23

By:   
JOSEPH L. BOYLAN  
Direct Account Management

**ORDER**

Having reviewed the terms of the foregoing Assurance of Discontinuance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: \_\_\_\_\_



Ireland, Mark (Judge)  
Feb 14 2023 3:03 PM

\_\_\_\_\_  
JUDGE OF DISTRICT COURT

THERE BEING NO CAUSE FOR FURTHER DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.