

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:) Chapter 11
)
MOVIE GALLERY, INC., et al.,) Case No. 10-30696 (DOT)
)
Liquidating Debtors.)
_____)

STIPULATION AND AGREED ORDER

This Stipulation and Agreed Order (the “Stipulation”) is entered into between the First Lien Term Lenders Liquidating Trustee (the “Trustee”), on behalf of the First Lien Term Lenders Liquidating Trust (the “Trust”) (each as defined in the Joint Plan of Liquidation of Movie Gallery, Inc. and Its Affiliated Debtors and Debtors in Possession (the “Plan”) approved by the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) in the above-captioned cases on October 28, 2010) and the Attorneys Generals¹ of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (the “Attorneys General”, and together with the Trustee, the “Parties”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

¹ The term “Attorneys General” shall be used to designate not only the signatory Attorneys General of the states but also the authorized representative within any jurisdiction signatory hereto that specifies an office other than that of the Attorney General to enter into agreements concerning matters relating to consumer protection.

WHEREAS:

1. Pursuant to the Plan, the Trustee is charged, among other things, with liquidating and collecting the Other Assets of the Estates. The Other Assets, as reflected on the Debtors' books and records, include accounts receivable from former customers of the Debtors related to alleged late fees and other alleged charges (collectively, the "Customer Accounts").

2. The Trustee, in the course of implementing the Plan, engaged Credit Control Services, Inc., ("CCS"), a Delaware corporation with headquarters located in Newton, Massachusetts, to handle the collection of the Customer Accounts.

3. CCS contracted with National Credit Solutions, LLC ("NCS") of Oklahoma City, Oklahoma to collect some of the Customer Accounts.

4. The Customer Accounts that the Trust referred for collection to CCS involve residents of all 50 states and the District of Columbia, and total approximately 3.3 million accounts with an aggregate of more than \$244,000,000.00 in face amount.

5. The Attorneys General have raised a number of objections and concerns about the collection activities of CCS and/or NCS involving the Customer Accounts, and have also expressed concerns as to certain other issues related to the Customer Accounts. These objections and concerns include, but are not necessarily limited to:

- a. Alleged lack of notice to consumers of the amounts allegedly owed;
- b. Negative credit reporting regarding amounts allegedly owed;
- c. Demands for collection fees in addition to the principal amounts allegedly owed by former customers of the Debtors;
- d. Principal amounts which the Attorneys General assert to constitute "double charges" whereby a consumer is held responsible for both late fees and

product charges² for items purportedly rented;

- e. Issues relating to the validity and/or enforceability of some or all of the Customer Accounts alleged to be due and owing, including, for example, issues relating to waiver, estoppel, and alleged lack of supporting documentation or other evidence to substantiate the alleged debts;
- f. Consumer complaints directly challenging underlying amounts alleged to be due and owing; and
- g. Issues relating to the collection tactics used by CCS and/or NCS with respect to their efforts to collect the Customer Accounts.

6. The Trustee contends that all actions taken by the Trust to date in connection with efforts to collect the Customer Accounts have been appropriate, and consistent with the Plan, the Debtors' customer agreements and applicable law.

7. NCS has advised the Trust that: (i) it furnished negative credit reporting information regarding the Customer Accounts to TransUnion and Experian but not to any other credit reporting agencies; (ii) by no later than January 29, 2011, NCS had requested that TransUnion and Experian reverse any negative credit reporting previously initiated by NCS with respect to any of the Customer Accounts, and (iii) NCS has already furnished to TransUnion and Experian all necessary information regarding the Customer Accounts to enable TransUnion and Experian to reverse all such negative credit reports.

8. NCS has also advised the Trust that, to the extent any collection fees were paid by customers as part of NCS's efforts to collect the Customer Accounts, the full amounts of such collection fees were paid to and retained by NCS, and no portion of such collection fees were paid

² A "Product Charge" is defined as a charge imposed by Hollywood Video or Movie Gallery for the value or cost of a rental item.

to or retained by the Trust.

9. The Trustee, with the approval and consent of the Trust's Oversight Committee, wishes to resolve the objections and concerns raised by the Attorneys General, in order that the Trust may proceed with efforts to collect valid Customer Accounts in a commercially reasonable and lawful manner. Subject only to the Court's approval of this Stipulation and Agreed Order, the Attorneys General have agreed that the Trustee may pursue the continued collection of valid Customer Accounts on the terms set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

A. **Rescission of All Previously Submitted Credit Reports.** The Trustee agrees to take such further steps, if any, as may be reasonably necessary and within the Trustee's power to assure that all negative credit reports submitted to any credit agency or bureau relating to the Customer Accounts are rescinded.

B. **No Future Credit Reporting and Future Collection Practices.** The Trustee agrees that no further reports will be submitted by the Trust, or by any collection agency or other agent acting on behalf of the Trust, to any credit reporting agency or bureau relating to the Customer Accounts at any time. The Trustee further agrees to take such steps as are reasonably necessary with CCS, NCS, and/or any other third party collection firm retained by the Trust to collect the Customer Accounts to assure that this provision is effectively implemented and adhered to. The Trustee shall also take all reasonably necessary actions to assure that any agent acting to pursue collection of any of the Customer Accounts expressly agrees that it shall comply with the provisions of the Fair Debt Collection Practices Act, applicable state laws, and with the venue provisions of 28 U.S.C. 1409(b) for any related litigation. Any collection agency utilized by the Trust to collect Customer Accounts shall also expressly agree that its employees and/or agents will

not state, suggest, imply or otherwise represent to any customer that their failure or refusal to pay the Customer Account could result in adverse credit reporting by the Trust or by the collection agency.

C. **No Future Collection of Fees or Interest.** The Trustee agrees that, in connection with any further efforts to collect the Customer Accounts, there shall be no collection fees or interest charges imposed on or added to the principal amounts owed by consumers on any of the Customer Accounts. The Trustee further agrees to take such steps as are reasonably necessary with CCS, NCS and/or any other third party collection firm retained by the Trust to collect the Customer Accounts to assure that this provision is effectively implemented and adhered to.

D. **Collection Fees Paid Prior to the Effective Date of this Stipulation.** The Trustee agrees to reasonably assist the Attorneys General in any effort to recover any collection fees that were improperly recovered by CCS or NCS prior to the effective date of this Stipulation, provided however, that such assistance shall not require the Trustee or the Trust to commence, prosecute or pursue any judicial or administrative action or similar proceeding. Reasonable assistance shall include, but not be limited to, obtaining information requested by the Attorneys General from Hollywood Video and Movie Gallery that relates to the Customer Accounts, or obtaining other information within the possession, custody or control of the Trustee which the Attorneys General deem reasonably necessary to pursue NCS or CCS with regard to their collection activities concerning the Customer Accounts

E. **Disputed Late Fees or Product Charges.** With respect to any individual consumer who has complained or does complain to the offices or agencies of any state, the Better Business Bureau, the Trustee or the Trustee's agents, specifically contending that no late fees or

Product Charges were due, and so long as such complaint has first been provided to the Trustee, the Trust agrees that it will undertake no further collection efforts with respect to that Customer Account without first completing a review of the Debtor's business records and concluding, based on such investigation, that there is a reasonable basis to conclude that such late fees and/or Product Charges are in fact due and owing in accordance with the contractual terms applicable to the customer. Upon the request of the Attorney General or other appropriate office or agency with jurisdiction over any such customer's complaint, the Trust will share the results of its aforementioned investigation with such office or agency, subject to such confidentiality restrictions as may be required by law, prior to authorizing CCS, NCS and/or any other third party collection firm retained by the Trust to resume collecting the Customer Account.

F. **No Recovery of Both Late Fee and Product Charges.** The Trustee agrees that for those Customer Accounts which include both a late fee and a Product Charge (for the same item), collection will be pursued only for the lesser of the two charges for any given rental item.

G. **No Recovery of Stand-Alone Product Charges.** The Trustee agrees not to pursue the collection of any Product Charges related to a specific transaction if the Product Charge is the only fee reflected on the Customer Account for that transaction.

H. **In the Event of the Sale of Customer Accounts.** To the extent that the Trustee transfers title to and ownership of any Customer Account to any third party, it agrees to do so pursuant to the following limitations:

- i. Any such proposed sale or transfer shall include, as an attachment to the contract, a copy of this Stipulation and a term within the contract stating that the purchaser agrees that it is subject to the terms of this Stipulation as if it were the Trustee, including, but not limited to, any limitations regarding the use of third-party collection agencies and refraining from referring any Customer Account to any credit reporting agency or credit bureau.

- ii. In addition to any notice or procedures required by the Court, the Trustee agrees to provide written notice to the Attorneys General of such pending sale at least 30 days prior to the completion of such sale. The notice should include:
 - a. the name and business contact information of the company to whom the debt is to be sold;
 - b. the contact information for the person with whom the sale is being negotiated; and
 - c. a copy of the proposed sale contract containing all terms of the agreement.

I. In consideration of the Trustee's agreement to, and subject to the Trustee's ongoing compliance with, the provisions of this Stipulation, the Attorneys General agree (i) not to interpose any generalized objections to the validity or legitimacy of the Customer Accounts, (ii) to take no actions to prevent, interfere with or delay the Trustee's collection of the Customer Accounts provided that such collection efforts are consistent with applicable state and federal law and with the terms set forth herein (subject to the rights of the Attorneys General to act on behalf of individual customer complaints as expressly provided for in the following sentence), and (iii) to assert no claims, actions or damages, and to seek no relief, whether legal or equitable, against the Trustees, the Trust, the beneficiaries of the Trust, the affiliates of any of the foregoing (which, for the avoidance of doubt, shall not include either CCS or NCS) or any of their respective professionals arising from the objections and concerns stated in above paragraph 5 of this Stipulation. Notwithstanding the foregoing, or any of the language included in Paragraph E, the Attorneys General reserve the right to take any and all appropriate actions reasonably necessary to assist any individual resident of their respective states in efforts to resolve concerns or disputes regarding a particular Customer Account, and the Trustee reserves all claims, rights and defenses of the Trust and of the Debtors with respect to any such Customer Account.

J. In consideration of the Attorneys' General agreement to the provisions of

this Stipulation, the Trustee, acting for and on behalf of the Trust and its beneficiaries, their agents, assigns, affiliates, successors and respective professionals, agrees to assert no claims, actions or damages, and to seek no relief, whether legal or equitable, against any of the Attorneys General for acts related to or arising out of the Attorneys' General investigation and/or the resolution of that investigation of the objections and concerns stated in above paragraph 5 of this Stipulation.

K. The Court shall retain exclusive jurisdiction over any disputes or claims arising from or related in any way to the Stipulation. Any motion or application brought before the Court to resolve a dispute arising from or related to this Stipulation and Agreed Order shall be brought on proper notice upon the undersigned parties in accordance with the relevant Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia. Notwithstanding the foregoing, this Stipulation shall not vest jurisdiction in the Court over claims by a private party or public official, based on state or federal law, against any third party collection firm that is involved in attempting to collect the Customer Accounts.

L. Nothing in this Stipulation shall be construed to create, waive, or limit any right of action by any of the Parties against any third party collection agency. This Stipulation does not constitute a release or waiver of claims against any third party, including but not limited to CCS and/or NCS.

M. Nothing in this Stipulation shall be construed to create, waive, or limit any private right of action or any other action by any party other than the Attorneys General.

N. The Trustee's agreement to comply with the provisions of this Stipulation shall be limited to Customer Accounts of customers resident within the jurisdictions of the respective Attorneys General, and the Trustee's pursuit of the collection of Customer Accounts of

customers resident outside of the jurisdictions of the respective Attorneys General shall be unaffected by this Stipulation.

O. Nothing in this Stipulation shall be construed as relieving the Trustee of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Stipulation be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

P. Once approved by the Court, this Stipulation shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.

Q. The Parties' resolution, as set forth in this Stipulation, is acknowledged to be consensual.

R. The undersigned Parties hereby represent and warrant that: (i) they have full authority to execute this Stipulation and Agreed Order; (ii) they have full knowledge of, and have consented to, this Stipulation and Agreed Order; and (iii) they are fully authorized to bind themselves to all of the terms and conditions of this Stipulation and Agreed Order.

S. Each Party shall bear its own attorneys' fees and costs in connection with the matters resolved hereby.

T. This Stipulation shall not be modified, altered, amended or vacated without the written agreement of the Parties.

U. Beginning on the effective date of this Stipulation and Agreed Order, information regarding consumer complaints submitted to the Attorneys General and that relate to or arise out of the objections and concerns stated in above paragraph 5 of this Stipulation, including without reservation acts undertaken by any successor to the Trustee or unnamed collection agents, will be directed to the following designee at the addresses provided:

Hollywood Video/Movie Gallery Customer Service
c/o Mr. Ryan Storfa
7405 Southwest Tech Center Drive, Suite 130
Tigard, Oregon 97223
Email: customerrequests@hlyw.com

V. This Stipulation and Agreed Order may be signed in counterparts, and when taken together, shall constitute a single document.

W. This Stipulation and Agreed Order shall be effective immediately upon its entry by the Court, and no stay shall apply.

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**CORLISS MOORE & ASSOCIATES,
LLC**, solely in its capacity as Liquidating
Trustee for the First Lien Term Lenders
Liquidating Trust

By: /s/ Steve Moore
Steve Moore, Trustee

Pursuant to the Local Rules, I certify under penalty of perjury that all necessary parties have endorsed this Stipulation and Agreed Order.

By: /s/ Michael A. Condyles

THIS STIPULATION IS SO ORDERED

Dated: _____
Richmond, Virginia

Chief Judge Douglas O. Tice, Jr.
United States Bankruptcy Judge