



3. Venue of this Chapter 7 case and this adversary is proper under 28 U.S.C. § 1409.

4. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b). The Court is authorized to grant the requested relief under Chapter 5 of the Bankruptcy Code.

## II. BACKGROUND FACTS

5. The Debtors, Kenneth Baumbach and Kristi Baumbach, filed a petition for relief under Chapter 7 of the Bankruptcy Code on August 3, 2007 (the “Petition Date”). C. Daniel Roberts (the “Trustee”) was appointed Chapter 7 Trustee and continues to act in that capacity.

6. In April 2004, prior to the bankruptcy, Debtors entered into an agreement with DebtXS for assistance with debt consolidation (the “Agreement”). A true and correct copy of the Agreement is attached hereto as *Exhibit A* and incorporated herein for all purposes. Pursuant to the Agreement, DebtXS was to provide the service of assisting the Debtors in resolving debts owed to their creditors. From April 27, 2004, through January 30, 2006, the Debtors made payments to DebtXS totaling \$14,301.33. DebtXS did not perform its duties and obligations under the Agreement.

7. The facts above support the Trustee’s assertions that (1) DebtXS breached the Agreement, and (2) DebtXS’ actions violated the Texas Deceptive Trade Practices Act (“DTPA”). Additionally, the payments made by the Debtors to DebtXS constitute fraudulent transfers pursuant to Bankruptcy Code § 548.

## III. CAUSES OF ACTION

### A. DTPA Violations

8. The Trustee incorporates by reference the allegations contained in paragraphs 1 through 7.

9. The Debtors are consumers as defined in TEX. BUS & COM. CODE § 17.45(4). The Debtors are individuals that sought or acquired goods or services by purchase or lease. Through the Agreement, the Debtors, as consumers, acquired debt resolution services from DebtXS.

10. DebtXS may be sued under the DTPA. DebtXS is a Texas limited liability company and falls within the definition of person in TEX. BUS & COM. CODE § 17.45(3). DebtXS was a party to the Agreement.

11. DebtXS knowingly and intentionally violated the DTPA by participating in false, misleading, or deceptive trade practices under the DTPA. More specifically, DebtXS: (1) represented that its services had characteristics, uses, and/or benefits which they did not have; (2) represented that its services were of a particular standard, quality or grade and they were of another; and/or (3) represented that its agreement with the Debtors conferred remedies which it did not have or were prohibited by law. TEX. BUS & COM. CODE § 17.46(b). DebtXS made these representations to the Debtors with the intent that they rely upon such representations when entering into the Agreement. The Debtors did rely upon DebtXS' representations, to their detriment.

12. DebtXS' actions were a cause-in-fact and a substantial factor in causing the Debtors' damages. The Trustee seeks to recover economic damages. Additionally, the Trustee seeks to recover treble damages because DebtXS acted knowingly and intentionally.

**B. Fraudulent Transfer Pursuant to Bankruptcy Code § 548**

13. The Trustee incorporates by reference the allegations contained in paragraphs 1 through 12.

14. Pursuant to Bankruptcy Code § 548, the Trustee may avoid any transfer of an interest of the debtor in property.

15. The payments to DebtXS by the Debtors constitute a transfer of interest of the Debtors in property. As will be shown at trial, the Debtor received less than reasonably equivalent value for the payments because DebtXS did not perform its duties and obligations under the Agreement. The Transfer were made within two years of Debtors filing their petition for bankruptcy. When the Transfer was made, the Debtors was insolvent or became insolvent as a result of the Transfer.

16. For these reasons, Trustee requests the Court enter judgment ordering that the payments be avoided pursuant to 11 U.S.C. § 548 and the property should be preserved for the benefit of the estate pursuant to 11 U.S.C. § 550.

**C. Liability Against Transferees Pursuant To Bankruptcy Code § 550**

17. The Trustee incorporates by reference the allegations contained in paragraphs 1 through 16.

18. Pursuant to Bankruptcy Code § 550, the Trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from the initial transferee of such transfer or the entity for whose benefit such transfer was made; or any immediate or mediate transferee of such initial transferee. The Trustee requests the Court order that the payments made by the Debtors to DebtXS be recovered by the Trustee from DebtXS preserved for the benefit of the estate pursuant to 11 U.S.C. § 550.

**D. Breach of Contract**

19. The Trustee incorporates by reference the allegations contained in paragraphs 1 through 18.

20. DebtXS' actions as described above constitute a breach of contract. Specifically, the Agreement between DebtXS and the Debtors is a valid, enforceable contract. DebtXS is the proper party to sue because it agreed to provide the services of assisting the Debtors in resolving debts owed to their creditors. The Debtors fully performed under the Agreement. DebtXS breached the contract by

failing to provide the services it agreed to provide pursuant to the Agreement. DebtXS' breach of contract caused the Debtors damages. The Trustee seeks to recover the damages suffered by the Debtors for the benefit of the Debtors' estate.

#### IV. REQUEST FOR RELIEF

WHEREFORE, premises considered, C. Daniel Roberts, Chapter 7 Trustee of the bankruptcy estate of Kenneth Baumbach and Kristi Baumbach, respectfully requests the Court to:

- (a) grant the Trustee economic and treble damages for DebtXS' violation of the DTPA;
- (b) avoid the fraudulent transfers made by the Debtors to DebtXS;
- (c) enter judgment against DebtXS in the amount of the payments made by the Debtors to DebtXS; and
- (d) grant such further relief, at law or in equity, to which the Trustee may be justly entitled.

Respectfully submitted,

BROWN MCCARROLL, L.L.P.  
111 Congress Avenue, Suite 1400  
Austin, TX 78701  
(512) 472-5456  
(512) 226-7324 (fax)

By: */s/ Kell C. Mercer* \_\_\_\_\_

Kell C. Mercer  
State Bar No. 24007668  
Afton Dee Sands  
State Bar No. 24060555

ATTORNEY FOR PLAINTIFF  
C. DANIEL ROBERTS,  
CHAPTER 7 TRUSTEE

## DebtXS, L. P. Client Service Agreement

1. **Parties.** This AGREEMENT is made this 20th day of April 2004

Between: Kristi Baumbach and Ken Baumbach (hereinafter referred to as "CLIENT" even if more than one) and DebtXS, L. P. 15301 Dallas Parkway, Suite 1110, Addison, TX 75001 (hereinafter referred to as "DXS") CLIENT acknowledges that several members of the DXS staff, or other independent contractors, may assist in handling this matter.

2. **Subject Matter of Agreement.** The subject matter of the representation is for DXS to assist in resolving debts owed to the following creditors: Wells Fargo, Wells Fargo

3. **Not Included in Representation.** CLIENT EXPRESSLY ACKNOWLEDGES THAT DXS DOES NOT PROVIDE LEGAL, TAX, OR INVESTMENT ADVICE. IF CLIENT NEEDS LEGAL ADVICE, LEGAL EXPERTISE OR COURT FILINGS, CLIENT MUST SEEK ADVICE OF AN ATTORNEY. This AGREEMENT does not include any representation for any claim or cause of action brought *against* CLIENT including cross-complaints. This AGREEMENT does not cover any appeal in which the CLIENT is an appellant or respondent arising from the original representation. Each representation for services requires a separate writing, which must be signed by both parties. CLIENT agrees that DXS has not represented that it will advise or assist CLIENT in the modification, improvement or correction of credit entries on CLIENT'S credit reports or that DXS can stop all collection phone calls or correspondence.

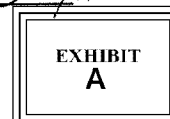
4. **Responsibilities of CLIENT.** CLIENT agrees to be truthful and cooperative; to promptly notify DXS of any phone number or address changes; to fill out and return any and all papers and questionnaires supplied by DXS *within FIVE DAYS* and to reasonably consider DXS's recommendations regarding any potential settlements. CLIENT expressly agrees to make timely payments for services rendered and to reimburse DXS for all fees earned per paragraph 13 and all costs advanced per paragraph 14 of this AGREEMENT.

5. **Responsibilities of DXS.** DXS has a duty to maintain the confidences and secrets of CLIENT. DXS will promptly and efficiently perform the duties described in the AGREEMENT; will keep CLIENT reasonably informed of progress in the pursuit of the case's objectives and will respond promptly to the CLIENT'S inquires and communications. DXS will begin to settle CLIENT accounts as soon as CLIENT has funds available and DXS believes there is a reasonable probability that the account will settle; provided, however, that DXS shall have no duty to complete negotiations and settle CLIENT'S accounts until CLIENT has paid DXS in full. DXS may, in its sole discretion, elect to negotiate settlement one or more of CLIENT'S accounts prior to being paid in full, which election shall not be construed a waiver, nor shall it obligate DXS to continue settling additional accounts until CLIENT has paid DXS in full.

6. **Settlements.** DXS will inform the CLIENT of the amount, and the terms and conditions of all written settlement offers. CLIENT will notify DXS IN WRITING by mail or facsimile to begin settling debts by providing the name of account to be settled, the amount to be settled, the amount to be offered, and the dates the funds are available to disburse to the creditor. CLIENT understands that debts less than \$750, seven hundred fifty dollars, may require payment of the full balance due at the time of settlement. CLIENT will make all settlement payments directly to the creditors. DXS will not settle CLIENT'S claim without the approval of the CLIENT, who possesses the absolute right to accept or reject any settlement. Although DXS does not give tax advice, creditors may notify the IRS of any debt forgiveness, which may be taxable to CLIENT.

Initials

KB KKB



## DebtXS, L. P.

### **7. Arbitration of Dispute.**

a. If there is any dispute between the parties arising out of this agreement, the parties agree to submit that dispute to the binding arbitration under the auspices of the American Arbitration Association (AAA). If such arbitration is held under the auspices of any other organization, the arbitration will be held in accord with AAA rules to the extent possible. In any event, venue for such arbitration will be in county and city of Dallas, Texas.

b. Binding Arbitration means that both parties give up the right to a trial by a jury. It also means that both parties give up the right to appeal from the arbitrator's ruling except for a narrow range of issues that are appealable under Texas law. It also means that discovery may be severely limited by the arbitrator.

**8. Disclaimer of Guarantee.** Although DXS may give an opinion about possible results, by signing the AGREEMENT, CLIENT acknowledges that DXS HAS MADE NO GUARANTEES, WARRANTIES, REPRESENTATIONS OR PREDICTIONS, EXPRESS OR IMPLIED, ABOUT THE OUTCOME OF ITS SERVICES, THE SUBJECT MATTER OF THIS AGREEMENT, OR THE TIME FRAME REQUIRED TO COMPLETE THE CONTRACTED SERVICES. CLIENT acknowledges that each case is unique and individual results may vary. CLIENT understands that contracted credit accounts will continue to accrue interest until accounts are settled. CLIENT also understands that creditors may impose other penalties as a result of delinquent payments, including but not limited to, the reporting of adverse information to credit bureaus and/or the filing of a lawsuit to collect subject debts if the creditor is unwilling to accept a settlement offer or CLIENT is unable to propose a settlement offer acceptable to the creditor. CLIENT understands that the services of DXS may have a negative impact of some CLIENTS credit reports. After considering these possibilities, CLIENT wishes to proceed with the terms and conditions of the AGREEMENT.

**9. Choice of Law and Jurisdiction.** In the event of any dispute regarding the representation, including service fees and costs, CLIENT and DXS agree that venue of resolution shall be in the county and city of Dallas, Texas. Both DXS and CLIENT agree that any disputes arising from the contract shall be governed by the laws of the state of Texas.

**10. Effective Date of AGREEMENT.** The AGREEMENT will take effect as of the date stated in paragraph 1, but its effective date will be retroactive to the date DXS first provided services.

**11. Client Payments to Creditors.** CLIENT agrees to a Savings budget of \$484.44 / month for 12 months beginning 7/30/2004 then \$1,084.36 / a month beginning 7/30/2005, all on the 30th day of the month, as reflected in the E1 Worksheet. These funds are budgeted for ultimate distribution to creditors, and will be budgeted until all contracted creditors are settled in full. CLIENT will make all settlement payments directly to creditors.

**12. All Pertinent Documents Required.** CLIENT must submit a complete financial profile to DXS WITHIN FIVE (5) DAYS including all correspondence, letters, records, receipts, bills, statements, evidence, legal papers, judgments and anything the CLIENT feels DXS should review in furtherance of CLIENT'S representation.

**13. FEES.** DXS charges one fee for all services provided. DXS earns as service fees as follows: (1) One-third (1/3) of the total service fee is earned when DXS performs budget review, debt analysis and file setup; (2) the second one-third (1/3) of the total service fee is earned when DXS has prepared initial correspondence to the contracted creditors; and (3) the final one-third (1/3) of the total service fee is earned once DXS or CLIENT has received a settlement offer from a contracted creditor or when contracted creditor has accepted settlement offer proposed by DXS on behalf of CLIENT, whichever occurs first.

Initials KB KRB

### DebtXS, L. P.

<b>Total Fees:</b>			\$10,509.45
Payment Plan Deposit	\$1,103.49	on	4/30/2004
Payment Plan Deposit	\$1,103.49	on	5/30/2004
Payment Plan Deposit	\$1,103.49	on	6/30/2004
Then <u>12</u> payments of <u>\$599.91</u> per month commencing <u>7/30/2004</u>			

14. **Costs.** CLIENT agrees to reimburse DXS for COSTS including, but not limited to; messenger and overnight delivery cost.

15. **Discharge or Withdrawal.** Either party may discharge the other by written notice effective when received by the discharged party.

CLIENT WILL BE OBLIGATED TO PAY DXS THAT PORTION OF THE TOTAL FEES ALREADY EARNED BY DXS IN ACCORDANCE WITH PARAGRAPH 13 OF THIS AGREEMENT AND TO REIMBURSE DXS FOR ALL COSTS ADVANCED IN ACCORDANCE WITH PARAGRAPH 14.

**NOTICE**

YOU, THE BUYER, MAY CANCEL THIS AGREEMENT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD DAY AFTER THE DATE OF THE TRANSACTION. SEE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT

THIS WRITTEN AGREEMENT constitutes the full and complete agreement between CLIENT and DXS. This written agreement supersedes any and all other agreements or understandings, whether written or oral, for the matter described in Paragraph 2.

I VERIFY THAT I HAVE READ AND UNDERSTAND THE ABOVE CONTRACT AND HAVE BEEN PROVIDED WITH A COPY FOR MY PERSONAL RECORDS.

DATED: 4-21- 2004

Kristi Baumbach

CLIENT (PRINT)

Kristi Baumbach

CLIENT Signature

KEN BAUMBACH

CLIENT (PRINT)

Ken Baumbach

CLIENT Signature

# DebtXS, L. P.

Avrille Harris

Authorized Representative

Sr. Debt Analyst

Title

## CLIENT AUTHORIZATION

**AUTHORIZATION TO OBTAIN INFORMATION.** I HEREBY GRANT DebtXS, L. P. THIS AUTHORIZATION TO REQUEST, RECEIVE AND DISCUSS ANY AND ALL ACCOUNT INFORMATION WITH MY CREDITORS ON MY BEHALF. THIS WILL INCLUDE BUT NOT BE LIMITED TO NEGOTIATING PAYMENTS TERMS AND CONDITIONS, SETTLEMENTS, EXTENSIONS AND/OR DEFERMENTS OF MY ACCOUNTS. In addition, I authorize the review of my financial situation with my creditors and I agree to indemnify and hold DebtXS, L. P. harmless of any loss, liability or damage by any reason thereof. This authority is assignable and transferable. I further authorize DebtXS, L.P. to order a consumer credit report and verify other information. It is understood that a copy of this form will also serve as authorization.

By signing this AUTHORIZATION, I hereby acknowledge that I have read the DebtXS, L. P. Agreement and accept and consent to all the terms set forth in the Agreement.

Kristi Baumbach

PRINTED Name

Kristi Baumbach

CLIENT Signature

KEN BAUMBACH

PRINTED Name

K. Baumbach

CLIENT Signature

4-21-04

Dated

4/21/04

Dated

# DebtXS, L. P.

## Client/Creditor Relationship Statement

IN ENTERING INTO THIS AGREEMENT, CLIENT REPRESENTS THAT DebtXS, L.P. HAS NOT, AND FURTHER UNDERSTANDS THAT DXS SHALL NOT, TAKE ANY ACTIONS TO DISRUPT THE RELATIONSHIP BETWEEN CLIENT AND ANY CREDITORS OR PERSONS WITH WHOM CLIENT HAS ANY CONTRACTUAL OR BUSINESS RELATIONSHIP. THE CLIENT FURTHER REPRESENTS THAT DXS HAS NOT PROVIDED CLIENT WITH ANY ADVICE OR RECOMMENDATION REGARDING THE ADVISABILITY OF REDUCING OR TERMINATING PAYMENTS TO CLIENTS CREDITORS. CLIENT, INDEPENDENTLY OF DXS, HAS DECIDED TO REDUCE OR TERMINATE PAYMENTS TO CREDITORS AND TO SEEK ASSISTANCE IN RESOLVING ANY OUTSTANDING CREDITOR CLAIMS, SUITS OR JUDGMENTS. **CLIENT HAS ENGAGED DXS FOR THE PURPOSE OF NEGOTIATING A RESOLUTION OF SAID CREDITORS WITHIN THE AGREEMENT.** CLIENT FURTHER INTENDS, BY THIS AGREEMENT, TO CREATE A CONFIDENTIAL RELATIONSHIP WITH DXS IN REGARD TO RESOLVING ANY OUTSTANDING CREDITOR CLAIMS, SUITS, OR JUDGMENTS.

I VERIFY THAT I HAVE READ, UNDERSTAND AND AGREE WITH THE ABOVE CLIENT/CREDITOR RELATIONSHIP STATEMENT AND I FURTHER AGREE AND UNDERSTAND THAT DebtXS, L.P. HAS NOT AND SHALL NOT TAKE ANY ACTIONS, VERBAL OR OTHERWISE, TO DISRUPT THE CLIENT/CREDITOR RELATIONSHIP. I HAVE ENGAGED DXS FOR THE PURPOSE OF NEGOTIATING A RESOLUTION OF SAID CREDITORS WITHIN THE AGREEMENT.

<u>Kristi Baumbach</u>		
	PRINTED Name	
<u>Kristi Baumbach</u>	CLIENT Signature	<u>4-21-04</u>
		Dated
<u>KEN BAUMBACH</u>		
	PRINTED Name	
<u>K Baumbach</u>	CLIENT Signature	<u>4/21/04</u>
		Dated

## DebtXS, L. P. LIMITED POWER OF ATTORNEY

I/We Ken + Kristi Baumbach as the Principal(s) have the right and as such nominate **DebtXS, L.P.** (hereinafter know as **ATTORNEY IN FACT**) with full power and authority to perform each and every act which may be necessary or convenient to perform the following tasks as fully for all intents and purposes as I might or could do if personally present, hereby ratifying and confirming all that my said **ATTORNEY IN FACT** shall lawfully do or cause to be done in my name or behalf; to wit:

**ACTIVELY INTERCEDE AND/OR INTERVENE AND/OR NEGOTIATE, MEDIATE, OR ARBITRATE THE SETTLEMENT OF ANY AND ALL OF MY CREDITOR CLAIMS, SUITS, LIENS, JUDGMENTS, AND/OR DISPUTES.**

Be it further known and understood that I/we consider the failure of any creditor or third party agent (collection agent or member of the bar) to recognize this power of attorney as an intentional act undertaken to interfere with my/our prospective contractual advantage, which may be actionable in court.

### NOTICE:

A. In accordance with section 805(B) of the Fair Debt Collection Practices Act I/we hereby authorize all future communications from any and/or all government agencies, creditors, collection agents, attorneys, credit bureaus, or any other third parties to be directed to the **ATTORNEY IN FACT**, stated above.

B. In accordance with section 805(C) of The Fair Debt Collection Practices Act the recipient of an original, photocopy or facsimile of this document is specifically instructed by me/us to direct all future communications to the designated **ATTORNEY IN FACT** stated above.

C. This **LIMITED POWER OF ATTORNEY** is effective upon signing by the **PRINCIPAL(S)** and specifically authorizes the recipients to disclose, talk about, communicate about, convey documents, and otherwise provide the above stated **ATTORNEY IN FACT**, anything and any information that they would otherwise provide to and disclose as information concerning any payable, debt, account, lien, suit, or judgment for which I/we are allegedly responsible, disputed or otherwise.

D. The recipient of this **LIMITED POWER OF ATTORNEY FORM**, whether by original, photocopy or facsimile, is specifically instructed by the undersigned **PRINCIPAL(S)** to contact the designated **ATTORNEY IN FACT** at the address set forth below; in addition, under the general laws under the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act, as a creditor or third party agent of a creditor, you do not have the ability to refuse to work with my/our designated **ATTORNEY IN FACT**, for such would constitute a refusal to work with me/us. If you so choose, you do so at your own risk.

**ATTORNEY IN FACT:** DebtXS, L. P., 15301 Dallas Parkway, Suite 1110, Addison, Texas 75001  
Phone: (972) 233-3135; Fax (972) 239-7858; E-mail Settlement@DebtXS.com

Executed this ~~2004~~ 21 day of April, 2004

Signature of Debtor Kristi Baumbach

Signature of Co-debtor Ken Baumbach

## DebtXS, L. P. ELECTRONIC DIRECT PAYMENTS (ACH) FORM

I authorize DebtXS, L. P. to generate entries to my bank for fee payments listed below to be processed through the Federal Reserve Automated Clearing House (ACH) system from the depository bank listed below

Please carefully complete Bank Routing number and Account Number to enable monthly electronic drafting on your account for fee payment. Attach a copy of a voided check

Service Fee: <b>\$10,509.45</b>	Client Name: <b>Kristi Baumbach</b>				
EFT Transaction	1.	Date:	4/30/2004	Amount:	\$1,103.49
	2.	Date:	5/30/2004	Amount:	\$1,103.49
	3.	Date:	6/30/2004	Amount:	\$1,103.49
	4.	Date:	7/30/2004	Amount:	\$599.91
	5.	Date:	8/30/2004	Amount:	\$599.91
	6.	Date:	9/30/2004	Amount:	\$599.91
	7.	Date:	10/30/2004	Amount:	\$599.91
	8.	Date:	11/30/2004	Amount:	\$599.91
	9.	Date:	12/30/2004	Amount:	\$599.91
	10.	Date:	1/30/2005	Amount:	\$599.91
	11.	Date:	2/28/2005	Amount:	\$599.91
	12.	Date:	3/30/2005	Amount:	\$599.91
	13.	Date:	4/30/2005	Amount:	\$599.91
	14.	Date:	5/30/2005	Amount:	\$599.91
	15.	Date:	6/30/2005	Amount:	\$599.91

I agree to the foregoing:

Client signature: X *Kristi Baumbach* Date: 4-21-04  
 Client signature: X *Kristi Baumbach* Date: 4/21/04

**COMPLETE THE FOLLOWING BANKING INFORMATION: (also fax us a voided copy of a check)**

Bank Routing number:           0659           (9 digits - left side on bottom of check)  
 Account Number:           9096           (up to 14 digits)  
 Account Type: Checking  Savings  (\* for Saving, ask the bank for their routing #, not the one on your account documents)  
 Name(s) as appears on check: Kenneth Baumbach Kristi Baumbach  
 Address: 1176 Southern Place City: Round Rock ST: TX Zip: 78664  
 Name of Bank: Wells Fargo  
 Bank Address: 10400 Research Blvd. City: Austin ST: TX Zip: 78664

DebtXS, L. P.  
Creditor Worksheet  
Client Name: Kristi Baumbach, Ken Baumbach

SSN: [REDACTED]-2088

Spouse SSN: [REDACTED]-7056

Creditor	Address	Account Number	\$Total	Office
1. Wells Fargo		5490 9613 4010 2291	\$20,063.12	
2. Wells Fargo		601 3980251	\$50,000.00	
Client Signature: <i>Kristi Baumbach</i> <i>Ken Baumbach</i>			\$70,063.12	

*KB* *KB*