

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA**

**OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,
STATE OF FLORIDA,**

Plaintiff,

Case No.: 05-13423 (03)

vs.

DENISE BATTISTA, a/k/a Denise Tognoli, individually and as Owner, President and Director of Global Mindlink Foundation, Inc. and Select International Donors Corp.; **LYNNE TALLMAN**, individually and as Owner and Director of Global Mindlink Foundation, Inc. and Select International Donors Corp.; **GLOBAL MINDLINK FOUNDATION, INC.**, a Florida not-for-profit corporation; **SELECT INTERNATIONAL DONORS CORP.**, a Florida not-for-profit corporation; **PRO COM ADV., INC.**, an administratively dissolved Florida corporation; **MARIO MANCUSO**, individually and as President and Director of Pro Com Adv., Inc. and **JOY MANCUSO**, individually and as part owner of Pro Com Adv., Inc.

Defendants.

**SETTLEMENT AGREEMENT BETWEEN THE STATE OF FLORIDA, OFFICE OF
THE ATTORNEY GENERAL AND DEFENDANTS DENISE BATTISTA, GLOBAL
MINDLINK FOUNDATION, INC. AND SELECT INTERNATIONAL DONORS CORP.**

COMES NOW Plaintiff, **OFFICE OF THE ATTORNEY GENERAL,**
DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA, by and through the
undersigned attorney and the Defendants **DENISE BATTISTA**, a/k/a Denise Tognoli,

individually and as Owner, President and Director of Global Mindlink Foundation, Inc. and Select International Donors Corp.; **GLOBAL MINDLINK FOUNDATION, INC.**, a Florida not-for-profit corporation and **SELECT INTERNATIONAL DONORS CORP.**, a Florida not-for-profit corporation and hereby stipulate and agree as follows:

DEFINITIONS

- A. AGREEMENT means the present Settlement Agreement.
- B. IMMEDIATELY means as of the effective date of the Agreement.
- C. EFFECTIVE DATE means the date on which the last party or their authorized representative has affixed their signature to the Agreement. It is understood and accepted that the authorized representative of the Plaintiff shall be Deputy Attorney General George LeMieux. The signature of the South Florida Bureau Chief on this agreement shall not establish any obligation on the part of the Deputy Attorney General to sign and thereby approve this agreement.
- D. DEFENDANTS means Denise Battista, Global Mindlink Foundation, Inc. and Select International Donors Corp. Defendant Battista shall be personally responsible and liable for carrying out any and all of the terms and conditions of this Agreement not accomplished by one of the Defendant entities.
- E. CONSUMER is defined as in F.S. 501, Part II and includes business entities.

TERMS AND CONDITIONS

It is agreed:

- 1. That Denise Battista aka Denise Tognoli, in her own name, individually and / or acting through any corporation, partnership or business entity, for profit or not for profit, in

which she has an ownership interest or in which she acts as an officer, director, board member, together with any agents, employees, successors, assigns, affiliated business entities and all other persons acting in concert or participation with her shall:

- a) Immediately and permanently refrain from engaging in any and all commercial telephone solicitation as defined in The Florida Telemarketing Act, Section 501.603(1) from or to the State of Florida. Any telemarketing license in her possession shall be forfeited and Defendant Battista shall be permanently enjoined from seeking such a license in the future, either in her own name or in the name of any corporate entity of which she is an owner, officer or director.
- b) Immediately and permanently refrain from engaging in the business practices identified in the complaint filed in the present cause or from violating Fla. Stat. 501, Part II..
- c) Immediately and permanently refrain from charitable fund-raising activities.
- d) Immediately and permanently refrain from participating as an employee, officer or director of a Florida not-for-profit corporation.
- e) Within 30 days of the effective date of this Agreement, take any and all such actions as are necessary to dissolve the corporate defendants according to the provisions this Agreement.

2. Within 30 days of the date of the effective date of this Agreement, Defendants shall formally dissolve corporate entities Global Mindlink Foundation, Inc. and Select

International Donors Corp. Defendants shall provide proof of said dissolutions to the Plaintiff within 10 days of their accomplishment.

3. Defendant Battista agrees to pay to Plaintiff the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) in "Settlement Funds" on or before May 1, 2006 or immediately upon the sale of her property located at 10075 Vestal Place, Coral Springs, FL (Parcel Number 484128033670), whichever comes first. Said property is listed in Broward County Records as belonging to Defendant Battista and husband Daniel Battista, now deceased. The property in question has been listed for sale by Defendant Battista with a licensed Realtor. Defendant Battista agrees to continue the listing of said property for sale with a licensed Realtor until said property is sold. Defendant Battista hereby declares and discloses that, in addition to a first and second mortgages, there is a Federal Tax Lien in the approximate amount of Sixteen Thousand Dollars on said property. She further warrants that there are no additional liens or encumbrances on the Coral Springs property.

Defendant Battista certifies that she is the sole owner of the Coral Springs property and that she has full and sole authority to enter into an agreement relating to its' sale or transfer. Defendant Battista agrees not further encumber said property and to timely pay any and all fees or payments required under any existing mortgage thereon.

4. To secure the payment of these funds, Defendant Battista shall execute and deliver to the Plaintiff, on or before the effective date of this Agreement, a Promissory Note in the amount of \$350,000.00 and a mortgage securing same. Defendant shall simultaneously deliver a certified copy of a death certificate for her husband, for purposes of recording, or proof that the same has previously been recorded on the land records of Broward County, Florida.

Plaintiff shall execute the appropriate Satisfaction upon payment in full of the amount owed. As the source of the Settlement Fund may be the proceeds from the sale of the above property, Defendant Battista hereby waives any right of homestead thereon.. It is understood that, upon the payment of the full \$350,000.00 Settlement fund to the Plaintiff, Defendant Battista may apply the remaining funds obtained from the sale of the property towards the mortgage on her property located in Suwannee County, Florida, with a legal description of: LEG Lot 9, Suwannee Ridge Unit 3 ORB 1066, P 291-92 WD YR 04 (hereinafter referred to as “the Suwannee Property”) and that she may assert a right of homestead as to these remaining funds with the following proviso:

5. Defendant Battista has disclosed that she is currently two months in arrears on payments for the mortgage on the Coral Springs property. In the event that Defendant Battista defaults on said mortgage, she agrees to waive any and all rights of homestead on her Suwannee Property to allow the Plaintiff to secure payment of the settlement funds from the sale of that property. Anthony Tognoli, is listed in Suwannee County records as the co-owner of the Suwannee Property. By his signature to the present agreement, Anthony Tognoli hereby waives any right of homestead to the Suwannee property he has now or may secure in the future in the event that Defendant Battista defaults on the mortgage on her home in Coral Springs. Anthony Tognoli agrees to voluntarily become a party to the present cause to ensure that any homestead protection he may eventually have in the Suwannee Property will not be used to defeat a right of the Plaintiff to secure payment of the settlement funds. It is agreed that the Complaint shall be amended to include Anthony Tognoli as a Defendant but will not allege any improper or illegal conduct on his part. Anthony Tognoli will be included in a Consent Judgment in this cause,

solely to formalize his waiver of homestead protection in the Swanee property should Defendant Battista default on the Coral Springs home mortgage.

6. The Settlement Fund payment of \$350,000.00 shall be made payable to the Legal Affairs Revolving Escrow Trust Fund and shall be forwarded in the form of certified check delivered to Robert R. Julian, Esq., Economic Crimes Bureau Chief, South Florida Region, 110 S.E. 6th Street, Tenth Floor, Fort Lauderdale, FL 33301 immediately upon closing on the sale of the subject property or the date specified in the promissory note, whichever occurs first. The Settlement Fund shall be payment for Plaintiff's attorneys fees and costs, as well as for restitution to: a) those consumers who have filed formal complaints with Plaintiff relating to the activities of the Defendants b) those Florida consumers identified by Defendants business records currently in the possession of the Plaintiff as having payed monies to the Defendants and c) those consumers who would file a complaint with the Plaintiff within thirty (30) days of the effective date of this Agreement. Any funds not used for purposes of restitution shall revert to the Legal Affairs Revolving Trust Fund as attorneys fees and costs. It is understood that the application of funds for purpose of restitution by Plaintiff in the present cause does not constitute evidence that restitution to consumers as the result of the activities outlined in the Complaint has been paid in full. While Plaintiff will not seek additional restitution from Defendant Battista as the result of this Agreement, Defendant understands that additional restitution might be ordered by a court of competent jurisdiction as the result of an action brought by a criminal prosecuting authority.

7. The Defendants enter into this Settlement Agreement without any admission that they have violated the law and for the purpose of settlement in this matter only and, in doing so, make no admissions as to the factual allegations included within the four corners of the present

Complaint.

8. Defendant Denise Battista aka Denise Tognoli hereby affirms and asserts that she has full authority to bind the Defendant corporations to the terms and conditions of this Settlement Agreement.

9. Notwithstanding any other provision of this Agreement, the terms and conditions set forth in these paragraphs shall apply.

The Complaint which was filed in this action sought injunctive relief, restitution, attorney's fees and penalties, pursuant to Chapter 501, Part II, Florida Statutes ("FDUTPA"). Penalties are not dischargeable in bankruptcy under 11 U.S.C. §523(a)(7). By this Agreement, the parties stipulate that the injunctive terms set forth herein are severable from the monetary terms of this agreement and shall be enforceable, under the State of Florida's police and regulatory powers, notwithstanding subsequent bankruptcy or any ensuing controversy concerning the monetary provisions herein.

The parties further stipulate that while the timely delivery of a duly executed promissory note, mortgage, and affidavit, constitute lawful severable "consideration" for the settlement of Plaintiff's outstanding restitution and attorney fee claims, that the delivery of such items shall not be construed as being intended to constitute lawful consideration for the waiver of Plaintiff's penalty claims. Rather, the parties agree that the sole consideration for waiver of penalty claims shall be the actual delivery and clearance of the settlement funds which have been promised, together with the firm assurance that neither Defendant or her successor in interest will seek to reclaim such funds, through bankruptcy proceedings or otherwise.

To accomplish this purpose, Plaintiff retains in full, without waiver or compromise, all of

its current rights to pursue penalty claims. These rights shall be preserved until such time as the sums set forth in the promissory note have been paid in full to the Plaintiff, deposited, and cleared and afterwards, until 90 days have passed without Defendant having filed bankruptcy. At that time, the penalties claims will be waived, based on the actual payment or consideration, but not until then or otherwise.

Should Defendant Battista file bankruptcy within 90 days from the clearance of such settlement funds, then, Plaintiff preserves its right to seek dismissal of such a bankruptcy proceeding, as having been filed in bad faith and Defendant agrees that such a filing would be in bad faith. Furthermore, Plaintiff's pending claims for penalties shall, in that eventuality, be continuously preserved until an order has been entered by the Bankruptcy Court recognizing the State's entitlement to retain settlement funds paid, or until some other mutually agreeable settlement terms have been approved by the Bankruptcy Court. At that time, the penalties shall be waived, but not until then or otherwise.

The Plaintiff's temporary preservation of its right to seek FDUTPA penalties is necessary to prevent the accidental discharge or waiver of nondischargeable penalties, based upon illusory promises. Additionally, this agreement is reasonable because the promissory note represents restitution amounts, not penalty amounts. Nevertheless, if Defendant fully complies with all terms herein, it will avoid any prospect of FDUTPA penalties arising from this action.

10. The Parties represent that all settlement funds shall be paid by Defendant Battista, not by the corporate defendants.

11. The Parties to this Agreement agree to the entry of a judgment approving and incorporating this Settlement Agreement. The Court will reserve jurisdiction of the cause to

enforce the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals this _____ day of

_____, 2005.

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

Denise Battista, aka Denise Tognoli

Robert R. Julian, Esq.
Economic Crimes Bureau Chief
South Florida Region
110 SE 6th Street, Tenth Floor
Fort Lauderdale, FL 33301.
954.712.4634
FBN: 262706

Date: _____

Global Mindlink Foundation, Inc.
Select International Donors Corp.
Denise Battista aka Denise Tognoli
as the authorized representative of
Defendants Global Mindlink Foundation
and Select International Donors Corp.

Date: _____

Paul Huck
Deputy Attorney General

Date: _____

Alvin Entin, Esq.
Attorney for Denise Battista aka Denise
Tognoli and for Defendants Global Mindlink
Foundation and Select International Donors Corp.

Date: _____

Anthony Tognoli

Date: _____