

SOUTHERN DISTRICT OF NEW YORK

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In re:

: Chapter 11
:

DREIER LLP,

: Case No. 08-15051-smb
:

Debtor.

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OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF DREIER LLP,

: Adv. Pro. No. 12-01682-smb
:

Plaintiff,

-against-

: STIPULATION AND ORDER OF
SETTLEMENT
:

NCT GROUP, INC., MIDCORE
SOFTWARE, INC., ARTERA GROUP,
INC., IRENE LEBOVICS, CY E.
HAMMOND, JOHN J. McCLOY II, SAM
OOLIE, and MICHAEL J. PARRELLA, SR.,

Defendants.
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STIPULATION AND PROPOSED ORDER OF SETTLEMENT

This **STIPULATION OF SETTLEMENT** (the "Agreement"), made as of this ____ day of March 2014, by and between the Official Committee of Unsecured Creditors of Dreier LLP ("Committee") and Irene Lebovics ("Ms. Lebovics"), Cy E. Hammond ("Mr. Hammond"), Sam Oolie ("Mr. Oolie"), and Michael J. Parrella, Sr. ("Mr. Parrella") (collectively, the "Individual Defendants") (together with the Committee, the "Parties"):

RECITALS

WHEREAS, Dreier LLP (the "Debtor") was a New York based law firm; and

WHEREAS, on December 16, 2008 the Debtor filed a voluntary petition under section 301 of the Bankruptcy Code; and

WHEREAS, on or about December 30, 2008, the Office of the United States Trustee appointed Sheila M. Gowan (the “Trustee”) as the Chapter 11 Trustee [Docket No. 33]; and

WHEREAS, on January 8, 2009, the Office of the United States Trustee appointed the Committee; and

WHEREAS, on May 21, 2009, the Bankruptcy Court So Ordered the Second Stipulation And Order Pursuant To Section 363 Of The Bankruptcy Code And Federal Rule Of Bankruptcy Procedure 4001 (1) Authorizing Trustee’s Use Of Cash Collateral, (2) Providing Adequate Protection, And (3) Granting Related Relief (the “Second Cash Collateral Stipulation”) [Docket No. 259] between the Trustee, the Committee and Wachovia Bank, N.A. (“Wachovia”); and

WHEREAS, the Second Cash Collateral Stipulation, inter alia, provides for the Trustee’s assignment to the Committee of her “right to pursue and collect, including standing to litigate on behalf of the Debtor’s estate, with respect to each of the Debtor’s accounts receivable identified on Schedule “A” attached to the Second Cash Collateral Stipulation (collectively, the “Hourly Receivables”); and

WHEREAS, in accordance with its authority under the Second Cash Collateral Stipulation and order of the Court dated August 24, 2009, the Committee retained Niehaus LLP as special counsel to pursue the collection of the Hourly Receivables; and

WHEREAS, the Court entered an Order (the “Amended AR Protocol Order”) on August 24, 2009 amending the prior Order entered on March 13, 2009 [Docket. No. 176] (the “Initial AR Protocol Order”). The Amended AR Protocol Order provides for approval mechanisms with respect to the settlement of Hourly Receivables; and

WHEREAS, the Committee, based upon the books and records of the Debtor, asserts that the Individual Defendants are former clients of the Debtor; and

WHEREAS, on June 1, 2012, the Committee commenced an adversary proceeding against the Individual Defendants, *inter alia*, by filing a complaint (the "Complaint") in the United States Bankruptcy Court for the Southern District of New York (the "Court") entitled *Official Committee of Unsecured Creditors of Dreier LLP v. NCT Group, Inc., Midcore Software, Inc., Artera Group, inc., Irene Lebovics, Cy E. Hammond, John J. McCloy II, Sam Oolie, and Michael J. Parrella, Sr.*, Adv. Pro. No. 12-01682 (the "Action"), alleging, *inter alia*, claims for unjust enrichment, quantum meruit, breach of contract, account stated and seeking declaratory relief and damages against the Individual Defendants in the sum of \$100,781.55 (the "Outstanding Balance"); and

WHEREAS, on January 7, 2014, an Order of Settlement was entered with respect to Defendant John J. McCloy II; and

WHEREAS, on February 3, 2014, the Clerk of this Court entered Judgment against corporate defendants NCT Group, Inc., Midcore Software, Inc., and Artera Group, Inc.; and

WHEREAS, the Individual Defendants dispute the Outstanding Balance and all allegations contained in the Complaint; and

WHEREAS, the Parties now wish to resolve this matter without further litigation;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the Committee and the Individual Defendants, intending to be legally bound, stipulate and agree as follows:

1. Incorporation of Recitals. All of the foregoing recitals shall be incorporated by reference into this Agreement.
2. Settlement Amounts. The Individual Defendants agree to pay and the Committee hereby agrees to accept the sum of **Forty-One Thousand and 00/100**

Dollars (\$41,000.00) (the "Settlement Amount") in full and final settlement of the Outstanding Balance with payment to be made payable to "Sheila M. Gowan as Chapter 11 Trustee for the Estate of Dreier LLP" to be delivered to the following address: Niehaus LLP, 590 Madison Avenue, 35th Floor, New York, New York 10022. Of the total Settlement Amount: Mr. Parrella shall pay \$10,250.00 on or before April 31, 2014; Ms. Lebovics shall pay \$10,250.00 on or before April 31, 2014; Mr. Oolie shall pay \$10,250.00 on or before July 31, 2014; and Mr. Hammond shall pay \$10,250.00 on or before July 31, 2014. Failure by an Individual Defendant to render payment of his or her installment - by the due date shall constitute default by such Individual Defendant. In the event of such a default the Committee shall give written notice to the Individual Defendants' counsel of the default, and such defaulting Individual Defendant shall have five (5) business days to cure their default by making the due payment.

3. Confessions of Judgment. As security for the deferral of payments to be made subsequent to the Effective Date of this Agreement the Individual Defendants shall execute affidavits of confession of judgment substantially in the form attached hereto as Exhibit A, in favor of the Committee in the amount of **Forty-Five Thousand, Thirty-One and 55/100 Dollars (\$45,031.55)**, such amount being equal to the Outstanding Balance less the sum paid pursuant to the Order of Settlement entered with respect to Defendant John J. McCloy II, and the sum of all other amounts anticipated to be received under this Agreement, excepting the amount payable by the affiant of the confession of judgment. Said confessions of judgment shall be an integral part of this Agreement, and the Agreement shall not be effective until said confessions of judgment are received by counsel for the Committee. The Committee agrees to hold said affidavits of confession

of judgment in escrow, not to be entered prior to August 15, 2014, and such affidavits of confession of judgment shall be obviated upon receipt of the respective settlement payments set forth in Paragraph 2.

4. No Other Sums. Except as provided in Paragraphs 2 and 3, no other or additional sums of any kind or amount are owed to the Committee by the Individual Defendants, any of their members, partners, principals, shareholders, representatives, attorneys, employees, parents, subsidiaries, successors, affiliates, employers, heirs and assigns.

5. Effective Date. This Agreement shall have no force and effect until such time as it is approved by the Bankruptcy Court or such earlier approval date as may be provided for in accordance with the Amended AR Protocol Order (the "Effective Date").

6. Dismissal. Within five (5) court days of receipt by the Committee of the final installment of the Settlement Amount, the Committee shall file with the Court a Dismissal With Prejudice of the Action.

7. Retention of Jurisdiction. The Parties hereby consent to the jurisdiction of the Bankruptcy Court for the sole and exclusive purpose of interpreting and enforcing the terms of this Agreement and resolving any disputes in connection herewith.

8. Release of Claims by the Committee and Debtor's Estate. Other than with respect to the Settlement Amount, the Committee, on behalf of the Debtor and its estate, hereby waives and releases any and all claims, causes of action, rights and remedies it has or had against the Individual Defendants or any of their members, partners, principals, shareholders, representatives, attorneys, employees, parents, subsidiaries, successors, affiliates, employers, heirs and assigns with respect to the Outstanding Balance and the

limited to, counsel for the Individual Defendants, against the Debtor, the Committee, the Trustee, and/or any party retained by the Debtor, the Committee or the Trustee pursuant to 11 U.S.C. §§ 327 or 328.

13. Complete Agreement. This Agreement, constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes any and all previous negotiations or understandings with respect thereto, all of which are merged herein.

14. Execution. This Agreement may be executed in counterparts and all such counterparts shall constitute a single Agreement, and signatures depicted by photocopy, facsimile or by scanned computer image file (such as PDF, JPG, and GIF) shall be valid and binding.

15. Binding Affect. This Agreement shall bind and benefit each of the Parties hereto and each of their respective affiliates, subsidiaries, successors and assigns and executors and administrators.

16. Interpretation of Agreement. The validity, interpretation and performance of this Agreement shall be controlled by, and construed under the laws of the State of New York, excluding any body of law governing conflicts of law.

17. Due Authority. Each of the Parties represent that they have the authority to execute this Agreement on behalf of and bind the respective Parties hereto.

18. Modification or Amendments. This Agreement may not be altered, modified, amended or changed in any respect or particular whatsoever, except by a writing duly executed by the Parties.

Dated: March 14, 2014

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF DREIER LLP

By its Special Counsel,
NIEHAUS LLP

By: 

Paul R. Niehaus, Esq.

Niehaus LLP

590 Madison Avenue, 35th Floor

New York, New York 10022

(212) 631-0223

Dated: March 14, 2014

IRENE LEBOVICS, CY E. HAMMOND,
SAM OOLIE and MICHAEL J. PARRELLA,
SR.

By their Counsel,
GREENE LAW, P.C.

By: 

Gary J. Greene, Esq.

11 Talcott Notch Rd.

Farmington, CT 06032

(860) 676-1336

Stuart M. Bernstein
United States Bankruptcy Court Judge

Exhibit A – Affidavit of Confession of Judgment

3. I have not paid the amounts due and owing to Dreier LLP.
4. I acknowledge plaintiff herein as the legal and court-authorized successor in interest to the amounts owed by Defendant to Dreier LLP.

[DEFENDANT]

Sworn to before me this ____ day of March 2014.

Notary Public