

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**IN RE:**

**UNITED MOBILE SOLUTIONS, LLC,**

**Debtor.**

**CHAPTER 11**

**CASE NO. 16-62537-bem**

**DEBTOR'S MOTION TO APPROVE COMPROMISE WITH MOIN TELECOM, LLC**

Debtor United Mobile Solutions, LLC ("Debtor") hereby files this Debtor's Motion to Approve Compromise with Moin Telecom, LLC (the "Motion") seeking approval of the Settlement Agreement between Debtor, ITALK Inc. ("ITALK") and Moin Telecom, LLC ("Moin") (collectively Debtor, ITALK and Moin are referred to herein as the "Parties") and, in support hereof, respectfully states as follows<sup>1</sup>:

**JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O).

2. The basis for the relief requested herein is Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and 11 U.S.C. §§ 105(a) & 365(a).

**BACKGROUND**

3. On July 20, 2016 (the "Petition Date"), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq. (as amended, the "Bankruptcy Code"), thereby commencing the above-captioned bankruptcy case (the "Bankruptcy Case").

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<sup>1</sup> Simultaneously with the filing of this Motion, Debtor is filing a Motion Seeking Expedited Hearing on this Motion.

4. ITALK is Debtor's parent company.

5. Prior to the Petition Date, on June 22, 2016, Moin commenced litigation as plaintiff in the State of Texas, Denton County, District Court identified as cause no. 16-04914-367 ("Moin Litigation") naming Debtor as Defendant.

6. Debtor is a master dealer for the sale of products and services of T-Mobile USA, Inc. ("T-Mobile").

7. In or around July 2015, Moin entered into a sub-dealer agreement with Debtor whereby Moin acted as a sub-dealer for Debtor for the sale of products and services of T-Mobile at the premises located at 1757 East Hebron Parkway, Suite 100, Carrollton, Texas 75010 (hereinafter, the "Premises").

8. In the Moin Litigation, Moin asserts various causes of action against Debtor regarding the sub-dealer agreement, seeking damages in excess of \$230,000.00<sup>2</sup>.

9. As of the date of this Motion, the Premises continues to be approved by T-Mobile as a T-Mobile dealer location. Debtor wishes to continue to serve as the master dealer for the Premises and settle the claims asserted by Moin related to the same. The Premises are currently sitting idle and are not being operated. There is currently inventory upon the Premises (in the store) that is a security issue, which needs to be rectified immediately in order to mitigate a potential claim against Debtor by T-Mobile. T-Mobile is agreeable to allowing Debtor to operate the store under its current master dealer agreement; however, time is of the essence as any further delay may threaten T-Mobile's agreement to allow Debtor to continue to operate as the master dealer at the Premises. In short, the proposed Settlement Agreement provides that Debtor's parent company, ITALK, will pay the settlement amount to Moin, assume the lease for

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<sup>2</sup> Pursuant to Debtor's Schedule F and Statement of Financial Affairs, Debtor lists Moin as holding a disputed claim of \$231,662.27.

the Premises and operate as the sub-dealer at the Premises allowing Debtor to continue to generate master dealer revenues. The Settlement Agreement is contingent upon Bankruptcy Court approval, and consent and approval of the landlord for the Premises with respect to ITALK taking over as tenant on terms agreeable to ITALK.

### **SETTLEMENT AGREEMENT**

10. The Parties have reached a settlement of the disputes related to the Moin Litigation.

11. All Parties deny any wrongdoing or liability, but agree that settlement is in the best interest of all Parties.

12. The Parties entered into a Settlement Agreement and Release (“Settlement Agreement”) memorializing the terms of the settlement of the disputes related to the Moin Litigation. A true and correct copy of the proposed Settlement Agreement is attached hereto as Exhibit “A.”

13. The Settlement Agreement is the controlling document, but Debtor summarizes the key terms of such as follows:

- i. ITALK shall pay Moin the total Settlement Amount of \$152,400.00 within 30 days of execution of the Settlement Agreement, which includes \$2,400.00 that Moin paid for the security deposit of the leased Premises;
- ii. Moin shall transfer all inventory, business and the real property lease for the Premises to Debtor and/or ITALK so that Debtor and ITALK may assume the operations of the T-Mobile store at the Premises pursuant to Debtor’s master dealer agreement with T-Mobile, and Moin shall cease all such operations at the Premises;
- iii. The Parties mutually release one another for all claims, known and unknown, arising from or related to the Moin Litigation; and
- iv. Moin shall dismiss the Moin Litigation with prejudice.

**RELIEF REQUESTED**

14. Debtor seeks authority from this Court to approve the Settlement Agreement pursuant to Rule 9019 of the Bankruptcy Rules.

15. The Parties believe the Settlement Agreement is in the best interest of Debtor's creditors and bankruptcy estate.

16. Bankruptcy Rule 9019 provides that the Court "may approve a compromise and settlement." Fed. R. Bankr. P. 9019. Compromises are tools for expediting the administration of the case, reducing administrative costs and are favored in bankruptcy. *See In re Bond*, 1994 U.S. App. Lexis 1282, \*9-13, Case No. 93-1410 (4th Cir. 1994) ("To minimize litigation and expedite the administration of a bankruptcy estate, 'compromises are favored in bankruptcy.'"); *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000); *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996). Various courts have endorsed the use of Bankruptcy Rule 9019. *See, e.g., Bartel v. Bar Harbour Airways, Inc.*, 196 B.R. 268 (S.D.N.Y. 1996); *In re Foundation for New Era Philanthropy*, 1996 Bankr. Lexis 1892, Case No. 95-13729F (Bankr. E.D. Pa. 1996); *In re Miller*, 148 B.R. 510, 516 (Bankr. N.D. Ill. 1992); *In re Check Reporting Service, Inc.*, 137 B.R. 653 (Bankr. W.D. Mich. 1992); *In re Patel*, 43 B.R. 500, 504 (N.D. Ill. 1982).

17. Under the circumstances, settlement of the Moin Litigation under the terms proposed is in the best interest of Debtor's estate and comports with each of the standards for approval of compromises under controlling case law. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968); *In re Jackson Brewing Company*, 624 F.2d 599, 602 (5th Cir. 1980); *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990). Those standards include: (a) probability of success in the litigation; (b) difficulties, if any, to be encountered in collection of any judgment obtained; (c) the complexity

and likely duration of the litigation and attendant expense, inconvenience and delay and (d) all other factors bearing on the wisdom of compromise, including the paramount interest of creditors.

18. The decision to approve a settlement or compromise is within the discretion of the Court and is warranted where the settlement is found to be reasonable and fair in light of the particular circumstances of the case. *See TMT Trailer Ferry*, 390 U.S. at 424-25. In making its determination, a court should not substitute its own judgment for that of the debtor. *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986).

19. In this case, all of the foregoing standards are met. Litigation of issues relating to the dispute will involve complex areas of contract and state tort laws and undoubtedly be expensive and time consuming. Additionally, during the pendency of such litigation, the Premises would be left in limbo and potential revenue would be lost by Debtor which could assist Debtor in satisfying the claims of its creditors. Moreover, if the Premises is left unoccupied for any further length of time, T-Mobile will likely take action to place a new master and sub dealer in the Premises eliminating Debtor's future revenue stream from such location and seek indemnification from Debtor for any losses.

20. Should the Settlement Agreement be approved, Debtor will have the opportunity to continue to operate as the master dealer for the T-Mobile store in the Premises and generate additional revenues. Absent the approval of this settlement, by the time that any litigation will have concluded, there is a high probability that the Premises will no longer be a revenue stream for Debtor. Under the circumstances, the interest of creditors will be best served by approval of the Settlement Agreement. The Settlement Agreement will not cost the estate any money, as Debtor's parent company, ITALK has agreed to fund the settlement payment. Approval of the

Settlement Agreement will ensure the master dealer revenue stream for Debtor from the Premises.

21. The proposed compromise among the Parties meets the standards for approval under applicable law. The Settlement Agreement represents a fair and efficient means for resolving the disputes, thereby recovering and preserving a revenue stream and avoiding loss for the estate. The Settlement Agreement also avoids the costs, delay, and uncertainty of any litigation regarding this matter, the continuation of which would indefinitely delay any chance of Debtor's ability to generate a revenue stream from the Premises.

22. Accordingly, and for reasons detailed herein, the Settlement Agreement is in the best interests of the estate and its creditors, and approval of the Settlement Agreement is warranted under Bankruptcy Rule 9019.

WHEREFORE, Debtor respectfully requests that this Court enter an order approving the Settlement Agreement and granting the Parties such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 21st day of September, 2016.

**JONES & WALDEN, LLC**

/s/ Cameron M. McCord  
Cameron M. McCord  
Georgia Bar No. 143065  
21 Eighth Street, NE  
Atlanta, GA 30309  
(404) 564-9300  
*Attorneys for Debtor*

# **Exhibit “A”**

**CAUSE NO. 16-04914-367**

**MOIN TELECOM, LLC,**

**Plaintiff,**

v.

**UNITED MOBILE SOLUTIONS, LLC,**

**Defendant.**

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**IN THE DISTRICT COURT**

**367<sup>th</sup> JUDICIAL DISTRICT**

**DENTON COUNTY, TEXAS**

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by and among MOIN TELECOM, LLC, UNITED MOBILE SOLUTIONS, LLC, ITALK INC., and their respective subsidiaries, their agents, insurers, servants, employees, contractors, attorneys, officers and directors, and their heirs, successors and assigns and all other participants in the stated activities (hereafter collectively referred to as the “Parties”).

**I. RECITALS**

WHEREAS, Plaintiff, MOIN TELECOM, LLC, (“Plaintiff”) filed Cause No. 16-04914-367 in the 367<sup>th</sup> District Court, Denton County, Texas (hereafter the “Litigation”) against UNITED MOBILE SOLUTIONS, LLC (hereafter the “Defendant”) stemming from and relating to a master dealer and sub-dealer agreement for the sale of T-Mobile USA, Inc. services and products at the property located at 1757 East Hebron Parkway, Suite 100, Carrollton, Texas 75010 (hereafter the “Occurrence”).

WHEREAS, all Parties specifically deny any type of alleged breach and/or alleged wrongdoing on their part, deny that any party suffered any damages or injuries, and further deny any liability to any party or anyone whomsoever.



WHEREAS, the Parties desire to settle all issues and disputes in this cause to avoid the risks and uncertainties of litigation, and further time and expense.

WHEREAS, Defendant is currently a debtor in a Chapter 11 Bankruptcy identified as case no. 16-62537 (the "Bankruptcy") pending in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Bankruptcy Court") and this Settlement Agreement is contingent upon approval by the Bankruptcy Court.

WHEREAS, the Parties agree that this Settlement Agreement and all obligations herein are contingent upon ITALK INC. ("ITALK") becoming the approved tenant for the Premises on terms agreeable to ITALK.

NOW, THEREFORE, the Parties hereby agree as follows:

## II. AGREEMENTS

### 1. FULL & FINAL RELEASE:

Parties agree that the terms, conditions and considerations set forth in this Settlement Agreement are a full and final settlement, compromise and release of any and all demands, claims and causes of actions, known and unknown, of any quality, kind and character which the Parties and their respective subsidiaries, their agents, insurers, servants, employees, contractors, attorneys, officers and directors, and their heirs, successors and assigns and all other participants in the stated activities may now have or may hereafter have to assert against the other Party, including their respective subsidiaries, their agents, insurers, servants, employees, contractors, attorneys, officers and directors, and their heirs, successors and assigns in the stated activities arising from or related to the Occurrence and/or the Litigation.

The release contained herein includes any and all claims, demands, and causes of action related to the Occurrence and/or the Litigation, and includes, without limitation, the following

damages, and types of damages: any alleged damages stemming from an alleged breach of contract; unjust enrichment; unpaid commissions; economic damages; non-economic damages; personal injury damages; tortious interference; exemplary damages; attorney's fees and costs; pre- and post-judgment interest; property damage; lost profits; negligent misrepresentation; money had and received; loss of goodwill and injury to reputation; mental anguish; and any other loss, expense or detriment of any kind or character, past, present or future, which Parties may now have or may hereafter have that arises from or relates to the Occurrence and/or the Litigation.

2. CONSIDERATION:

In consideration of this Settlement Agreement, the Parties hereto agree to settle all claims and controversies known and unknown between the Parties, relating to the Litigation and/or Occurrence by, upon execution of this Agreement, the total sum of ONE HUNDRED FIFTY THOUSAND DOLLARS AND 00/100'S (\$150,000.00) will be paid to Plaintiff on behalf of the Defendant and ITALK within thirty (30) days of execution of this Settlement Agreement by all Parties. This payment will be paid on behalf of UNITED MOBILE SOLUTIONS, LLC and guaranteed by UNITED MOBILE SOLUTIONS, LLC'S parent corporation ITALK INC.

Further in consideration of this Settlement Agreement, the total sum of TWO THOUSAND FOUR HUNDRED DOLLARS AND 00/100'S (\$2,400.00) will be paid to Plaintiff on behalf of the Debtor and ITALK within thirty (30) days of execution of this Settlement Agreement by all Parties in consideration for Plaintiff's release of any claim to the security of deposit of the leased premises located at 1757 East Hebron Parkway, Suite 100, Carrollton, Texas 75010 (the "Premises"). This payment will be paid on behalf of UNITED

MOBILE SOLUTIONS, LLC and guaranteed by UNITED MOBILE SOLUTIONS, LLC's parent corporation ITALK INC.

ITALK INC. guarantees that the total sum of ONE HUNDRED FIFTY TWO THOUSAND DOLLARS AND 00/100'S (\$152,400.00) (the "Settlement Amount") will be paid to Plaintiff on behalf of UNITED MOBILE SOLUTIONS, LLC within thirty (30) days of execution of this Settlement Agreement.

Further, in consideration of this Settlement Agreement, the Parties hereto agree that immediately upon approval of this Settlement Agreement by the Bankruptcy Court and execution of a Lease Assumption Agreement (by the Landlord and ITALK and any other necessary parties) resulting in ITALK being the tenant for the Premises, Plaintiff will transfer to ITALK and/or Debtor all inventory, business, and lease associated with the store location located at the Premises and vacate and turnover the Premises to ITALK. ITALK will be responsible for all further rent payments and expenses for the remainder of the lease starting with any amount owed for September 2016. Plaintiff will no longer be responsible for any liabilities or debts, known or unknown, any agreement with United Mobile Solutions, LLC, any agreement with T-Mobile USA, Inc., or the store or lease agreement for the property located at 1757 East Hebron Parkway, Suite 100, Carrollton, Texas 75010. Parties will execute and work in good faith to complete all necessary documents to execute the assignment and transfer of the lease and business associated with the store located at 1757 East Hebron Parkway, Suite 100, Carrollton, Texas 75010.

Upon execution of this Agreement and the assignment of Lease Agreement, the Parties shall be fully released and forever discharged of liability from any and all demands, claims, and causes of action that a party has or may hereafter have arising from or related to the Occurrence and the Litigation, whether the right, alleged right, or conduct is known or unknown, and

whether the right or alleged right arises under common law, equity, tort, violation of any statute, or any contract or implied contract, whether known or unknown, or may hereafter have, arising from or related to the Occurrence and/or the Litigation.

It is expressly understood and agreed that the foregoing consideration for this Settlement Agreement is contractual and not merely a recital. By signing this Settlement Agreement, Parties acknowledge the sufficiency of the consideration.

3. EXPENSES, BILLS & ATTORNEY FEES:

Each individual party will be fully responsible for satisfying all unpaid expenses and bills, including, but not limited to, attorney fees, which have been or may hereafter be incurred by the individual party, on the individual party's behalf or for the individual party's benefit as a result of the Occurrence and Litigation without exception or the request for any additional sums of money from any party.

4. COMPLETE AGREEMENT:

All agreements and understandings between the Parties are embodied and expressed in this Settlement Agreement. The recitals set forth above are adopted and made a part of this Settlement Agreement and shall be binding herein.

5. DOUBTFUL & DISPUTED CLAIM:

The Parties to this Settlement Agreement warrant and represent by signing this Settlement Agreement that they understand that this settlement is being made purely upon a compromise basis in order to avoid further time, trouble, litigation, and expense; that it is the compromise of a disputed claim; and that the Parties have not admitted liability, but have at all times, and still do, expressly deny any and all liability for the demands, claims, and causes of

action that arise from or relate to the Occurrence, Litigation, and/or which have been asserted or which could have been asserted in the above-styled Litigation.

6. DISMISSAL WITH PREJUDICE:

Parties agree to dismiss all claims and causes of action asserted in the above-styled lawsuit (the “Litigation”) with prejudice immediately upon payment of the Settlement Amount. All attorney’s fees, expenses, and costs of Court will be paid by the party incurring same.

7. EXECUTION OF THE DOCUMENT:

Plaintiff warrants and represents that its representative is legally competent to execute this Settlement Agreement on behalf of the Plaintiff; that it has entered into this Settlement Agreement of its own free will and in accordance with its own judgment and after consideration with its own attorneys, and any other persons of its choosing; and does state by signing hereto that it has not been induced to enter into this Settlement Agreement by any statement or representation on the part of any other party or any other party’s attorneys. Plaintiff acknowledges and represents that it relied upon only its own judgment and the recommendations and advice of its individual counsel or any other persons of its choosing in consenting to the agreements set forth above and in consenting to the settlement of this matter with the Parties as stated and allocated above.

Defendant warrants and represents that its representative is legally competent to execute this Settlement Agreement on behalf of the Defendant; that it has entered into this Settlement Agreement of its own free will and in accordance with its own judgment and after consideration with its own attorneys, and any other persons of its choosing; and does state by signing hereto that it has not been induced to enter into this Settlement Agreement by any statement or representation on the part of any other party or any other party’s attorneys. Defendant

acknowledges and represents that it relied upon only their own judgment and the recommendations and advice of its individual counsel or any other persons of their choosing in consenting to the agreements set forth above and in consenting to the settlement of this matter with the Parties as stated and allocated above.

The Parties agree that this Settlement Agreement shall be construed without regard to any presumption or other rule requiring construction against the party drafting it or who caused it to be drafted.

8. GOVERNING LAW:

All Parties agree that this Settlement Agreement shall be governed and interpreted in accordance with the laws of the State of Texas.

9. INTENT OF AGREEMENT:

It is the intent of the Parties to this Settlement Agreement that no party will pay any more money to anyone by way of cross-action, third-party action or any other action asserted in any future lawsuit that arises from or relates to the Occurrence and/or Litigation.



In Witness whereof, UNITED MOBILE SOLUTIONS, LLC has signed this Settlement Agreement, Release, and Indemnification on this the \_\_\_ day of \_\_\_\_\_, 2016.

**YOU ARE MAKING A FINAL SETTLEMENT BY SIGNING THIS SETTLEMENT AGREEMENT AND RELEASE - READ IT CAREFULLY BEFORE SIGNING**

\_\_\_\_\_  
**UNITED MOBILE SOLUTIONS, LLC**  
**BY:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
Defendant

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed above, and acknowledged to me that he/she executed the same for the purposes and considerations and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF \_\_\_\_\_



In Witness whereof, **ITALK INC.** has signed this Settlement Agreement, Release, and Indemnification on this the \_\_\_\_ day of \_\_\_\_\_, 2016.

**YOU ARE MAKING A FINAL SETTLEMENT BY SIGNING THIS SETTLEMENT AGREEMENT AND RELEASE - READ IT CAREFULLY BEFORE SIGNING**

\_\_\_\_\_  
**ITALK INC.**  
**BY:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
Guarantor

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed above, and acknowledged to me that he/she executed the same for the purposes and considerations and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE  
STATE OF \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing Motion on all parties listed below by depositing a copy of same in the United States Mail, postage prepaid and via any additional method indicated below.

Moin Telecom, LLC  
c/o James D. Stanton, Esq.  
3811 Turtle Creek Centre #770  
Lallas, TX 75219-4536

Office of the United States Trustee  
362 Richard B. Russell Federal Building  
75 Ted Turner Drive, S.W.  
Atlanta, Georgia 30303

This 21st day of September, 2016.

**JONES & WALDEN, LLC**

/s/ Cameron M. McCord  
Cameron M. McCord  
Georgia Bar No. 143065  
21 Eighth Street NE  
Atlanta, GA 30309  
(404) 564-9300  
*Attorneys for Debtor*