State of California - Department of Corporations

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA CORPORATIONS COMMISSIONER, Plaintiff, v. MONEY MANAGEMENT INTERNATIONAL, INC., a Texas corporation, MONEY MANAGEMENT BY MAIL, INC., a Virginia corporation, and DOES 1-25, inclusive, Defendants.	Case Number: CGC-07-463953 COMPLAINT FOR INJUNCTION, CIVIL PENALTIES AND ANCILLARY RELIEF (Financial Code sections 12104, 12105, 12106, 12307.1 and 12316) Date: CASE MANAGEMENT CONFERENCE SET Time: Dept: NOV - 2 2007 -9:00 AM DEPARTMENT 212

PRESTON DuFAUCHARD, California Corporations Commissioner, acting to protect the public from unlawful bill paying and prorating practices brings this action in the public interest in the name of the People of the State of California. The People of the State of California allege as follows:

JURISDICTION AND VENUE

1. The California Corporations Commissioner ("Commissioner"), pursuant to Government Code section 11180 and Financial Code section 12105, subdivision (a), seeks to enjoin Defendants and protect the public from unlawful bill paying and prorating practices, which violate the California

Check Sellers, Bill Payers and Proraters Law ("CSBPPL"), set forth in California Financial Code section 12000 et seq. All further statutory references are to the Financial Code unless otherwise indicated. Additionally, the Commissioner seeks restitution, disgorgement, civil penalties and costs pursuant to section 12105, subdivisions (b), (d) and (e) and sections 12106, 12307.1 and 12316.

2. Defendants' activities involve their advertisements, publications and toll-free telephone numbers promoting their services of receiving consumers' funds to provide prorating services or bill paying services to consumers. Defendants' advertisements solicit consumers to contact Defendants via the Internet. Defendants also solicited consumers via their Internet websites to enroll in their respective debt management plans online by use of interactive websites. Defendants' websites provide consumers the means of transacting business from their computers with Defendants. Defendants' activities conducted by means of websites are not passive, but rather are highly interactive, systematic and continuous so as to support a finding of general jurisdiction in this State. During all relevant times, Defendants maintain systematic, continuous and substantial contacts with California consumers by their presence, in the form of public advertisements and use of interactive websites. Defendants also have offices located in California and have been transacting business throughout California, including in the City and County of San Francisco.

DEFENDANTS

3. Defendant Money Management by Mail, Inc. ("MMBM") was organized in October 1996 as a tax-exempt, not-for-profit Virginia corporation with its corporate headquarters at 9009 West Loop South, Houston, Texas 77096. MMBM also operated under the name Money Management International, Inc. According to the California Secretary of State's Office, MMBM surrendered its certificate to do business in California as a foreign corporation on June 6, 2003.

4. Defendant Money Management International, Inc. ("MMI"), was organized under the laws of the State of Texas, as a tax-exempt, not-for-profit corporation with its corporate headquarters at 9009 West Loop South, Houston, Texas 77096. MMI first filed with the California Secretary of State's Office to do business in California on January 16, 2003. MMI's President and CEO is Ivan L. Hand, Jr. ("Hand"). Mr. Hand's annual compensation and benefits exceed $360,000. Mr. Hand has personally made representations to the Better Business Bureau about Defendants and their activities.

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5. Defendants MMBM and MMI are related and entered into various financial arrangements with each other. At some point MMBM was merged into MMI and hereinafter they will be referred to as "Defendants", except where a specific name is relevant. Defendants also operate as Consumer Credit Counseling Services of San Diego & Imperial Counties, Inc., ("CCCS-San Diego"); Consumer Credit Counseling Services, Centers for Financial Education, American Credit Counselors, Consumer Credit Counseling Services of Southwestern Virginia, Inc. ("CCCS-Virginia"); Consumer Credit Counseling Services of Southern New England, Inc. (CCCS-SNE"); Consumer Credit Counseling Services of Denver ("CCCS-Denver"); Consumer Credit Counseling Services of East Bay, Inc., ("CCCS-East Bay"); Credit Counseling Centers, Inc.; CCCS-Maine, CCCS-St Louis; FCS Consumer Credit Counseling Corporation, ("FCSCCC"); Consumer Credit Counseling Services of Louisiana, Inc., ("CCCS-Baton Rouge"); Consumer Credit Counseling Service of Oregon ("CCCS-Oregon"); Consumer Credit Counseling Services of Lehigh Valley, Inc. ("CCCS-Lehigh Valley"); Consumer Credit Counseling Services of South Jersey, and Family Service Association. In September 2001 Defendants formed an affiliated tax-exempt entity, Money Management International Financial Education Foundation, also known as MMI Financial Education Foundation ("MMI FEF"), which is co-located with Defendants in Texas. Defendants have paid their affiliate MMI FEF over $2 million since it was formed and in exchange MMI FEF pays Defendants a "management fee."

6. Defendants Does 1 through 25, inclusive, are persons, corporations, partnerships or other entities who have done or will do acts otherwise alleged in this Complaint. The Commissioner is informed and believes and based upon such information and belief alleges that Defendants Does 1 through 25, inclusive, at all times mentioned herein, have acted and are continuing to act in concert with the Defendants named in this Complaint, and each of them has participated in the acts and transactions referred to below, and each of them is responsible for said acts and transactions. The true names and capacities of Does 1 through 25, whether individuals, corporations or otherwise, are unknown to the Commissioner, who therefore sues said Defendants under such fictitious names, pursuant to the provisions of section 474 of the California Code of Civil Procedure. The Commissioner hereby asks leave of the Court to amend this Complaint to allege the true names and capacities of such Defendants at such time as the same have been ascertained.

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7. The Commissioner is informed and believes, and on such information and belief alleges that, at all times mentioned herein, each Defendant is and was, the agent, servant, employee, partner, and/or joint venturer of the other Defendants, and that each Defendant, in performing the acts alleged in this Complaint, was acting within the scope of such agency, service, employment, partnership or joint venture, and with the knowledge, permission, and/or consent of each and every other Defendant.

8. The Commissioner is informed and believes, and on such information and belief alleges that each Defendant alleged to have committed any act, did commit the same pursuant to a common plan and scheme among all Defendants, and did so as the agent for each and all of its co-defendants and pursuant to and in furtherance of the common plan and scheme.

9. The Commissioner is informed and believes and on such information and belief alleges that at all times relevant, the Defendants named herein as officers, directors, partners, agents or employees, acted in such capacities in connection with the acts, practices and scheme of business as set forth below.

10. Whenever reference is made in this Complaint to "Defendants" doing any act, the allegation shall mean the act of each Defendant acting individually, jointly and severally and the conspiring of these Defendants to do so.

11. Whenever reference in this Complaint is made to any Defendant(s) doing any act, the allegation(s) shall mean acts done or authorized by the officers, directors, agents and employees of the Defendant(s), while actively engaged in the management, direction or control of the affairs of the Defendants and while acting within the course and scope of their employment.

STATEMENT OF FACTS

12. The Commissioner of the Department of Corporations ("Department") administers and enforces the CSBPPL. The underlying purpose of the Legislature in enacting certain provisions of the CSBPPL was to safeguard consumers' financial interests. An increasing number of "credit counseling companies" via the Internet, yellow pages and other advertisements solicit funds of California consumers ("consumers") with the promise to offer them relief from harassment from creditors or bill collectors and to improve consumers' finances by means of debt management services. The credit counseling companies receive various fees for their services of obtaining funds

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from consumers and disbursing funds to the consumers' creditors. Such arrangements constitute prorater and bill payer activities and are governed by the CSBPPL.

13. Defendants describe their services to consumers as providing debt counseling and a debt management plan ("DMP") that includes working with the consumer and creditors of the consumer to arrange a payment schedule, wherein the above-named persons and their affiliates on behalf of the consumer distribute payments monthly to the creditors of the consumer. Alleged benefits associated with their program include paying debts in much less time, negotiating with creditors to lower monthly payments, reduce interest rates and stop late charges, and the convenience of paying all their debts in one monthly payment. Defendants' services to consumers pursuant to their debt management plan involving the receipt of funds from consumers to distribute to the creditors of the consumer constitutes activities as proraters and/or bill payers. Proraters and bill payers generally are required to be licensed to engage in these activities. Section 12200 states:

> No person shall engage in the business, for compensation, of selling checks, drafts, money orders, or other commercial paper serving the same purpose, or of receiving money as agent of an obligor for the purpose of paying bills, invoices, or accounts of such obligor, or acting as a prorater, nor shall any person, without direct compensation and not as an authorized agent for a utility company, accept money for the purpose of forwarding it to others in payment of utility bills, without first obtaining a license from the commissioner.

14. The CSBPPL defines proraters in section 12002.1, which states:

> A prorater is a person who, for compensation, engages in whole or in part in the business of receiving money or evidences thereof for the purpose of distributing the money or evidences thereof among creditors in payment or partial payment of the obligations of the debtor.

15. Defendants' prorating services consist of debt-counseling services or programs, which include negotiations of repayment plans with creditors of consumers, whereby Defendants, and others acting in concert or participation with them, will receive money from the consumer for the purpose of distributing the money among a consumer's creditors in payment of that consumer's obligations. Defendants' bill paying services involve the receipt of money as an agent of a consumer for the purpose of paying the bills of a consumer. At relevant times Defendants were

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not licensed or exempted from licensure to do business as a bill payer or prorater. The failure of Defendants to be licensed or exempted violates the CSBPPL.

16. Defendants are to negotiate with a consumer's creditors and claim that they "work with creditors to lower monthly payments and reduce interest charges." Defendants received funds from consumers that were to be paid to consumers' creditors in accordance with the consumer's DMP. Defendants represent that:

> Our program will combine all your creditor obligations into one monthly deposit. Once your deposit has arrived at our office, it is then disbursed to your creditors individually.

Pursuant to a DMP a consumer's funds are deposited into a bank account totally controlled by Defendants. Defendants invest consumer's funds resulting in investment earnings, which Defendants retain for themselves. From Defendants' bank account a consumer's creditors are to be paid monthly the specific amount agreed upon and set forth in the DMP. In exchange for the Defendants' services, some California consumers pay Defendants a "set up" fee of up to $99 and additional amounts for Automated Clearing House (ACH) fees, non-ACH fees, counseling fees, education package fees, late fees, NSF fees. Defendants also take from a consumer's bank account on a monthly basis an amount that Defendants referred to as "voluntary" fees, contributions or donations. It also appears that consumers paid increased fees to Defendants through Defendants' "Payment Flex Fund."

17. When dealing with creditors Defendants represent themselves as "a national debt counseling service that gives creditors what they want most" and there would no charges or fees to the creditors' customers, and they did not charge consumers application, counseling, monthly maintenance or postage fees. Defendants seek and receive from creditors a percentage (4-15%) of the amount of money they collected from consumers, which was referred to as a "fair share fee." Creditors pay Defendants a fair share fee from funds creditors receive from consumers or Defendants can directly collect the fair share fee from the consumer's funds they hold to pay creditors. Defendants have a financial incentive to arrange for payments to creditors. If creditors were paid directly by consumers, Defendants would not receive their fair share fee from creditors for consumers' debt repayments.

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18. Defendants as a financial services company entrusted with consumers funds represent they are knowledgeable and experienced in financial planning, budgeting, and money management and able to assist consumers with their finances. Yet, consumers complained that Defendants failed to pay their creditors, paid their creditors late, or paid their creditors incorrect amounts. Defendants would unilaterally select which creditors to pay and in what amounts they would be paid that at times differed from the amounts agreed upon in the debt management plan. Complaints of some consumers reflect that a consumer's credit was worse after entering Defendants' program than before entering the program as a result of Defendants' incorrect, untimely payments or complete failure to make payments to creditors after a consumer had forwarded funds to Defendants to pay their creditors. Defendants may claim such incorrect payments are "errors" that only represent a small percentage of all their clients. However, to the individual consumer, whose creditors were not paid, paid untimely or paid incorrect amounts, Defendants' failure rate is 100%. Defendants' failures have resulted in creditors assessing additional late fees or imposing other adverse consequences upon consumers.

19. Certain non-profit companies may seek an exemption from the licensing requirements of the CSBPPL found in section 12200. Section 12104 provides an exemption for non-profit community service organizations if, and only if, all the legal obligations set forth in section 12104 have been met. The legal obligations set forth in section 12104 are not elective, optional or discretionary but essential. Fulfillment of these legal obligations is a prerequisite to establishing an exemption from licensure as a non-profit community service organization. Thus, for Defendants to be exempt from licensure pursuant to section 12104, all mandatory conditions found in section 12104 must be met. Section 12104 describes these and, in relevant part, states:

> A nonprofit community service organization that meets all of the following criteria shall be exempt from any requirements imposed on proraters pursuant to this division:
>
> (a) The nonprofit community service organization incorporates in this state or any other state as a nonprofit corporation . . .
>
> (c) The nonprofit community service organization has as its principal functions the following:
>
> (1) Consumer credit education.
>
> (2) Counseling on consumer credit problems and family budgets.

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(3) Arranging or administering debt management plans. "Debt management plan" means a method of paying debtor's obligations in installments on a monthly basis.

(4) Arranging or administering debt settlement plans. "Debt settlement plans" means a method of paying debtor's obligations in a negotiated amount to each creditor on a one-time basis.

(d) The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c): a one-time sum not to exceed fifty dollars ($50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 8 percent of the money disbursed monthly, or thirty-five dollars ($35) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. For purposes of this subdivision, a household shall be considered one debtor. The fees allowed pursuant to this subdivision shall be the only fees that may be charged by a nonprofit community service organization for any services related to a debt management plan or a debt settlement plan. . . .

(i) The nonprofit community service organization submits to the commissioner, at the organization's expense, an audit report containing audited financial statements covering the calendar year or, if the organization has an established fiscal year, then for that fiscal year, within 120 days after the close of the calendar or fiscal year.

(j) The nonprofit community service organization submits with the annual financial statements required under subdivision (i) a declaration that conforms to Section 2015.5 of the Code of Civil Procedure, is executed by an official authorized by the board of the organization, and that states that the organization complies with this section. The annual financial statements shall also include a separate written statement that identifies the name, address, contact person, and telephone number of the organization. . . .

(l) The nonprofit community service organization does not engage in any act or practice in violation of Section 17200 or 17500 of the Business and Professions Code.

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(m) The nonprofit community service organization inserts the following statement, in not less than 10-point type, in its debt management plan and debt settlement plan agreements: "Complaints related to this agreement may be directed to the California Department of Corporations. This nonprofit community service organization has adopted best practices for debt management plans and debt settlement plans, and a copy will be provided upon request."

(n) The nonprofit community service organization adopts and implements on a continuous basis policies or procedures of best practices that are designed to prevent improper debt management or debt settlement practices and prevent theft and misappropriation of funds. Failure to do the following shall constitute improper debt management or debt settlement practices, as applicable: . . .

(7) Provide consumer access to debt management plan services regardless of the consumer's ability to pay fees related to the debt management plan, lack of creditor participation, or the amount of the consumer's outstanding debt.

20. The California Legislature imposes the burden of proving an exemption from the licensing requirement on the one seeking the exemption. Defendants' burden of proving an exemption is found in section 12101.5, which states, "[i]n any proceeding under this law the burden of proving an exemption or exception from a definition is upon the person claiming it."

21. Pursuant to section 12104, subdivision (d), Defendants may not charge consumers a one-time sum that exceeds fifty dollars ($50) for education and counseling combined in connection with debt management or debt settlement services or a sum not to exceed eight (8) percent of the money disbursed monthly, or thirty-five dollars ($35) per month, whichever is less. During relevant times, the amounts Defendants charged consumers exceeded these amounts. Moreover, Defendants received from the sum of money that consumers paid to creditors a "fair share" fee, which can result in an aggregate fee that exceeds legal maximum amount found in section 12104.

22. MMI obtained consumers' fees and consumers' funds collected for disbursement to creditors as cash. MMI converted the cash to "cash equivalents" such as "time deposits, certificates of deposit" and "liquid debt instruments" and regarded them as "cash investments." MMI placed it cash investments with financial institutions, which at times did not have adequate FDIC insurance to protect consumers' funds. MMI kept the earnings it made on its investment of consumers' cash.

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23. Defendants filed declarations under penalty of perjury under the laws of the State of California that they were in compliance with section 12104. However, Defendants were not in compliance with section 12104.

24. Pursuant to section 12104, subdivisions (i) and (j), companies seeking an exemption must file audited financial reports and declarations with the Commissioner no later than 120 days after their fiscal year end. On December 18, 2002, MMBM claimed an exemption as a non-profit community service organization pursuant to section 12104 by filing with the Department a Nonprofit Community Service Organization Notice and Written Consent Notice (Form CSCL – 118). The authorized individual signing on behalf of MMBM was Vice President /CFO David A. Juengel ("Juengel") and the contact person was Jean L. Law ("Law"). The Department assigned File Number 247-0020 to the documents submitted by MMBM and subsequently reviewed them. However, MMBM never filed with the Department the audited financial reports and declarations for the exemption. Upon Departmental review it was apparent that MMBM failed to meet the requirements for an exemption and was so notified on February 25, 2004. The Department informed MMBM that because it surrendered its registration with the California Secretary of State's Office on June 6, 2003, it was not operating pursuant to either the Nonprofit Public Benefit Corporation Law or the Nonprofit Mutual Benefit Corporation Law, a condition that must be met to qualify for an exemption from the licensing requirement found in section 12200. Additionally, the Department informed MMBM that it failed to submit as required by April 30, 2003, its 2002 audited financial statements and a declaration for the calendar year ending December 31, along with a separate written statement that identifies the name, address, contact person and telephone number of the organization. On March 8, 2004, Defendants notified the Department that over a year earlier, on January 1, 2003, MMBM had merged into MMI. Also, on March 8, 2004, Defendants filed not MMBM's but MMI's financial statements for the year ending December 21, 2002. Although MMBM did file its Form 990 with the IRS, Defendants never filed MMBM's financial statements for the year ending December 31, 2002, with the Department even though it did not merge with MMI until January 1, 2003. Moreover, the financial statements Defendants did file were deficient. First, the required declaration was not filed with the audited financial statements. Second, Defendants' filing was untimely; both the audited

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financial statements and declarations were required to have been filed no later than April 30, 2003, but were received almost a year late in March 2004.

25. MMI did not file a Nonprofit Community Service Organization Notice and Written Consent Notice (Form CSCL – 118) to claim an exemption from the licensing requirements of the CSBPPL pursuant to section 12104 with the Department on January 1, 2003, the date Defendants claim MMBM merged with MMI. Not until May 2, 2003, did co-defendant MMI submit this form to the Department. This Notice filed by MMI did not refer to MMBM even though the notice requested information about a predecessor. Consequently, the Department assigned a new File Number 247-0051 to the documents submitted by MMI because Defendants failed to disclose that MMI was related to MMBM. The Notice submitted by MMI showed that the authorized individual signing on behalf of MMI was also Vice President /CFO Juengel and the contact person was also Law.

26. Only after the Department wrote to MMBM on February 25, 2004, informing it of its failure to comply with the exemption requirements in Financial Code section 12104, did Law on behalf of MMBM file with the Department a Notice of Dissolution or Termination of Engaging in the Activities of a Prorater (Form CSCL – 130). This form dated March 5, 2004, stated that MMBM "Merged into Money Management International Inc." and that MMBM terminated its activities on "01/01/03." Thus, over a year later, and only upon the Department informing Defendants about their failure to comply with the requirements of the section 12104 exemption, did Defendants provide any information about their relationship and status to the Department.

27. Notwithstanding the late submissions about MMBM, MMI also failed to meet the requirements for an exemption from the licensure requirement. MMI as successor corporation to MMBM or as the surviving entity after the "merger" was required to submit audited financial statements for the 2002 year ending December 31, by the statutory deadline of April 30, 2003. The Department found that MMI failed to timely submit the audited financial statements – not until May 27, 2003, did the Department receive MMI's 2002 Audit Report and Declaration and the audited financial statements for the year ending December 31, 2002.

28. Again, MMI failed to meet a requirement for a section 12104 exemption from the licensing requirement when it failed to submit audited financial statements for the 2003 year ending

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December 31, by the statutory deadline of April 30, 2004. Not until May 25, 2004, did the Department receive the 2003 Audit Report and Declaration and the audited financial statements for the year ending December 31, 2003.

29. MMI failed again to meet a requirement for a section 12104 exemption from the licensing requirement when it failed to timely submit audited financial statements for the 2004 year ending December 31, by the statutory deadline of April 30, 2005. Not until May 25, 2005, did the Department receive the 2004 Audit Report and Declaration and the audited financial statements for the year ending December 31, 2004.

30. MMI failed to timely notify the Commissioner that MMI's acquisition of Consumer Credit Counseling Services of Greater Washington, Inc., (File 247-0069) also known as CCCS of Greater Washington resulted in its dissolution and termination of activities on June 30, 2005. Only after the Commissioner's representative requested the annual audited financial statements and other required filings from Consumer Credit Counseling Services of Greater Washington, Inc., did MMI comply with the legal requirement found in section 12104, subdivision (q) to file a termination notice. On June 20, 2006, almost one year after MMI's merger with Consumer Credit Counseling Services of Greater Washington, Inc., did MMI file with the Commissioner the Notice of Dissolution or Termination of Engaging in the Activities of a Prorater. MMI violated section 12104, subdivision (q) by failing to file the required notice with the Commissioner within 30 days as required by law.

31. MMI's total revenues in 2006 exceeded $81 million. The salaries and benefits paid to the highest paid employees and officers, directors and trustees are all six-figure amounts, including Juengel and Law. Hand received total benefits of over $360,000 during 2004, 2004 and 2005.

32. On July 14, 2005, pursuant to section 12103 the Commissioner issued a Desist and Refrain Order ("Order"), which required MMBM and MMI to cease from engaging in business as a bill payer or prorater unless and until they are licensed or exempt. MMBM and MMI were served with the Commissioner's Order on July 21, 2005, and required to immediately comply with the Order. The Order informed Defendants they had violated section 12200 by engaging as a bill payer or prorater without a license or exemption. Along with the Order MMBM and MMI were informed of their right to a hearing and given a copy of section 12103, but they never requested a hearing.

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A. Fee Overcharges and Continuing CSBPPL Violations

33. Pursuant to section 12106 the Commissioner may investigate, review, examine and audit the books, accounts, records and files of bill payers and proraters. During an investigation the Commissioner discovered that Defendants charged consumers fees in excess of the amounts authorized by law. The limited records that were obtained from Defendants reveal the details of the amount each consumer was overcharged. MMI overcharged consumers in 2003 and continued doing so through the fall of 2005. During this period, MMI violated the limit on monthly fees at least 9,479 times with regards to consumers it first enrolled. The amount overcharged to consumers exceeded $74,108. From January 2, 2005 to November 9, 2005, MMI violated the limit on monthly fees at least 10,446 times with regards to other consumers it acquired from another company, AmeriDebt. Some months MMI overcharged 59% of these clients. The average overcharge during this time period was 89% and the total amount overcharged to them aggregates $136,507. Previously, AmeriDebt, Inc., dba AmeriDebt, and its successors Debtworks, Inc., dba Debtworks and The Ballenger Group LLC dba The Ballenger Group each received a Desist and Refrain Order for violations of the CSBPPL. Notwithstanding the fact that regulators (such as the Federal Trade Commission, State of Illinois and the Department) had previously taken action against AmeriDebt, Inc., dba AmeriDebt, Debtworks, Inc., dba Debtworks and The Ballenger Group LLC dba The Ballenger Group for violations of law, Defendants nonetheless continued to overcharge consumers and violated provisions of section 12104, which includes subdivisions (d), (i), (j), (l) (m) and (n)(7). In sum, during the approximately two years and ten-month period reviewed, MMI violated the law 19,925 times by overcharging more than $210,615 and collecting fees in excess of the statutory limit from at least 6,036 California consumers. The percentage of the amount overcharged by MMI varied, but in some cases MMI overcharged consumers by more than 400% of the amount allowed by section 12104. Pursuant to section 12316, Defendants contracts with consumers are void and Defendants are required to return approximately $4,000,000 to consumers. Defendants' violations were not accidental but willful in that MMI continued to overcharge California consumers long after the Commissioner's Orders issued to AmeriDebt and its successor, The Ballenger Group. Defendants repeatedly violated the Commissioner's Order issued to them on July 14, 2005.

34. The Commissioner's review also reveals that MMI charged consumers additional unauthorized fees. Section 12104 prohibits the charging of any fees except as specified in section 12104. Section 12316 provides for voiding a contract if a prorater charges a debtor an amount that exceeds the maximum permitted, stating that the prorater shall return to the debtor all charges received from the debtor. Defendants have received over $4,000,000 in charges from 2003 to 2005.

B. Trust Account Information Nondisclosure and Other Violations of the CSBPPL

35. Section 12104, subdivisions (i) and (j), required MMI to file audited financial statements in connection with the exemption it claimed from the licensing requirement. MMI repeatedly failed to timely file its audited financial statements and other required documents with the Commissioner.

36. Section 12104, subdivision (f), requires MMI to file accurate written documents. These documents include, but are not limited to, a Notice and Written Consent Part I, Part II and Part III. MMI's documents filed with the Commissioner contain inaccurate statements about the financial institution where consumers' funds are located, the trust account and the written consent of the financial institution. MMI failed to file an amended Part I, amended Part II, or amended Part III and therefore is in violation of section 12104, subdivision (f).

37. Contrary to section 12104, subdivision (l), Defendants violated Business and Professions Code sections 17200 and 17500 by representing the monthly charges to be "voluntary" or a "contribution" or a "donation," but not offering consumers the option not to pay or a receipt for a tax-deductible contribution.

38. Additionally, Defendants failed to provide consumers with information that complaints could be directed to the Department of Corporations, that Defendants were required to adopt the best practices for debt management plans, and that a copy would be provided upon request as required by subdivision (m) of section 12104. Defendants represented themselves to be non-profit corporations filing pursuant to the Internal Revenue Code section 501(c)(3) as a charity. Defendants classified the payments received from consumers as a "contribution" on their audited financial statements. Defendants consistently referred to the withdrawal of consumers' funds for payment of services as a "voluntary contribution" but the "contributions" made by consumers are not tax deductible. Defendants do not provide consumers with a receipt for the charitable donation or give them a choice

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to make or not make the contribution. At times when soliciting consumers, the Defendants would represent to consumers that consumers could make a voluntary contribution to Defendants for the services they provided, however consumers later discovered the monthly contribution is not voluntary. When consumers later received information that Defendants regarded the monthly payments as a "voluntary contribution" and sought to have their respective past contributions refunded or any future "contributions" discontinued, Defendants would inform consumers that the law required that they make the payments or that the consumer did not qualify for free services because of their level of income. Subdivision (n) (7) of section 12104 requires proraters to provide access to debt management plan services regardless of the consumer's ability to pay fees related to the debt management plan. Defendants' actions thus violated subdivision (n)(7) of section 12104.

39. Defendants have not disclosed to consumers the Better Business Bureau ("BBB") actions to revoke Defendants' BBB membership or inquiries made by other state regulators. Defendants falsely represented the Department's Order to other states including, but not limited to, Maryland. Defendants have not disclosed to consumers that they falsely answered questions asked by state regulators about the Department's investigation into their activities. Defendants have not disclosed to consumers that they have not complied with all state regulatory requirements to provide for pre-filing bankruptcy counseling or counseling certificates in all states. Such activities constitute a violation of the Business and Professions Code and/or section 12104, subdivision (l).

40. On July 14, 2005, the Commissioner ordered Defendants to cease violations of the CSBPPL and informed them that they could request a hearing concerning the Order. Defendants never requested a hearing, nor was a hearing held.

41. Even though the Commissioner's Order has been in effect since its issuance, MMI falsely represented to the San Diego BBB that "the Department was not able to produce any proof of overcharges to California consumers" and that "the company is in full compliance with the State requirements." MMI's President Ivan Hand made these and other false statements. In reliance upon these misrepresentations the San Diego BBB posted MMI's false and misleading information that it received from Defendants through President Hand on the BBB's website. Such activities constitute a violation of the California Business and Professions Code and section 12104, subdivision (l).

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FIRST CAUSE OF ACTION

(Financial Code section 12104 – Fee Overcharges and Additional Charges to Consumers)
(All Defendants)

42. The Commissioner hereby re-alleges and incorporates by reference paragraphs 1 through 41 of this Complaint as though fully set forth.

43. Section 12104, subdivisions (d) and (n) (7), provide as follows:

> (d) The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c): a one-time sum not to exceed fifty dollars ($50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 8 percent of the money disbursed monthly, or thirty-five dollars ($35) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. . . .
>
> (n) The nonprofit community service organization adopts and implements on a continuous basis policies or procedures of best practices that are designed to prevent improper debt management or debt settlement practices and prevent theft and misappropriation of funds. Failure to do the following shall constitute improper debt management or debt settlement practices, as applicable: . . .
>
> > (7) Provide consumer access to debt management plan services regardless of the consumer's ability to pay fees related to the debt management plan, lack of creditor participation, or the amount of the consumer's outstanding debt.

44. Section 12316 provides for the voidance of contract if a prorater charges a debtor an amount that exceeds the statutory limit and requires the prorater to return all charges to the debtor.

45. Section 12105, subdivisions (b) and (d), provide as follows:

> (b) If the commissioner determines it is in the public interest, the commissioner may include in any action under this division a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative or civil court shall have jurisdiction to award an additional relief.

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> (d) Any licensee or person who willfully violates any provision of this division, or any rule or order thereunder, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

46. Since at least January 1, 2003, and continuing through at least August 2005, MMI, its agents, employees and representatives, have violated section 12104 by charging and receiving excessive fees from numerous consumers.

47. Each of the Defendants named in this Complaint has engaged, or participated, assisted, aided or abetted in a material way, or directed the charging and receiving of excessive fees for bill paying and prorating in violation of section 12104 subdivisions (d) and (n)(7).

48. Defendants and their agents, employees and representatives will continue to charge and receive excessive fees from consumers in violation of section 12104 unless enjoined, and unless required to disgorge all fees pursuant to sections 12105, subdivision (b) and 12316 to the affected consumers and pay civil penalties pursuant to section 12105, subdivision (d).

SECOND CAUSE OF ACTION

(Financial Code section 12104 – Failure to File Required Audited Report and Declaration)
(All Defendants)

49. The Commissioner hereby re-alleges and incorporates by reference paragraphs 1 through 48 of this Complaint as though fully set forth.

50. Section 12104, subdivisions (i) and (j), state:

> (i) The nonprofit community service organization submits to the commissioner, at the organization's expense, an audit report containing audited financial statements covering the calendar year or, if the organization has an established fiscal year, then for that fiscal year, within 120 days after the close of the calendar or fiscal year.
>
> (j) The nonprofit community service organization submits with the annual financial statements required under subdivision (i) a declaration that conforms to Section 2015.5 of the Code of Civil Procedure, is executed by an official authorized by the board of the organization, and that states that the organization complies with this section. The annual financial statements shall also include a separate written statement that identifies the name, address, contact person, and telephone number of the organization.

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51. Pursuant to section 12104, subdivision (f), MMI is required to provide the Commissioner with a written notice with the name, address, and telephone number of the bank, where the trust account for consumers is maintained, the name of the account and the account number. MMI was also required to provide an irrevocable written consent signed by MMI and the bank where the trust account is maintained.

52. Section 12104, subdivision (q) states that a nonprofit community service organization is to provide written notice to the Commissioner within 30 days of dissolution or termination of engaging in the activities of a prorater, as defined in section 12002.1.

53. Since January 1, 2003, and continuing through at least August 2005, MMI, its agents, employees and representatives, have violated subdivisions (f), (i), (j), and (q) of section 12104.

54. Each of the Defendants named in this Complaint has engaged, or participated, assisted, aided or abetted in a material way, or directed the additional charges in violation of section 12104.

55. Defendants and their agents, employees and representatives will continue to charge consumers unauthorized additional fees in violation of section 12104 unless enjoined, and unless required to pay civil penalties pursuant to section 12105, subdivision (d).

THIRD CAUSE OF ACTION
(Financial Code section 12104 – Misleading Statements)
(All Defendants)

56. The Commissioner hereby re-alleges and incorporates by reference paragraphs 1 through 55 of this Complaint as though fully set forth.

57. Section 12104, subdivision (l), provides as follows:

> (l) The nonprofit community service organization does not engage in any act or practice in violation of Section 17200 or 17500 of the Business and Professions Code.

58. Section 17200 of the Unfair Competition Act (Business and Professions Code section 17200 et seq,) provides as follows:

> As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500 of Part 3 of Division 7 of the Business and Professions Code.

59. Business and Professions Code section 17500, in relevant part, states:

> It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised.

60. Defendants represented themselves to be non-profit corporations filing pursuant to the Internal Revenue Code section 501(c)(3) as a charity. Defendants classified the payments received from consumers as a "contribution". At times when soliciting consumers, the Defendants would represent to consumers that they could make a voluntary contribution to Defendants for the services they provided. Defendants consistently referred to the withdrawal of consumers' funds for payment of services as a "voluntary contribution." Yet, they never provided the consumers with a receipt for the charitable donation and never gave them a choice to make or not to make the contribution, so it was anything but voluntarily. When consumers sought to have either their respective past contributions refunded or any future "contributions" discontinued, Defendants at times refused to do so, informing consumers that the law required that they make the payments or that their level of income did not qualify them for free services or reduced monthly "contributions."

61. Defendants' advertisements claim they have been approved by the Executive Office for the U.S. Trustees to issue counseling certificates in compliance with the bankruptcy code but failed to disclose to consumers that they have not meet the state regulatory requirement to do so. Defendants have falsely represented the reason for and status of the Department's Order.

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62. On July 14, 2005 the Commissioner ordered Defendants to cease violations of the CSBPPL and informed them that they could request a hearing concerning the Order. Defendants never requested a hearing, nor was a hearing held. Yet, Defendants falsely represented to the San Diego BBB that "the Department was not able to produce any proof of overcharges to California consumers" and that "the company is in full compliance with the State requirements." Defendants knew that the San Diego BBB would post the false and misleading information on the BBB's website and that consumers would rely upon the false information in considering which credit counseling company consumers would contact concerning their creditors.

63. Defendants, and their agents, employees and representatives, have violated section 12104, subdivision (l).

64. Each of the Defendants named in this Complaint has engaged, or participated, assisted, aided or abetted in a material way, or directed the false statements about the Commissioner's Order.

65. Defendants and their agents, employees and representatives will continue in violation of section 12104, subdivision (l), unless enjoined, and unless required to pay civil penalties.

FOURTH CAUSE OF ACTION

(Financial Code section 12104 – Failure to Disclose Required Information)
(All Defendants)

66. The Commissioner hereby re-alleges and incorporates by reference paragraphs 1 through 65 of this Complaint as though fully set forth.

67. Section 12104, subdivision (m), provides as follows:

> The nonprofit community service organization inserts the following statement, in not less than 10-point type, in its debt management plan and debt settlement plan agreements: "Complaints related to this agreement may be directed to the California Department of Corporations. This nonprofit community service organization has adopted best practices for debt management plans and debt settlement plans, and a copy will be provided upon request."

68. Since January 1, 2003, and continuing thereafter, MMI, its agents, employees and representatives, have violated section 12104, subdivision (m), on multiple occasions by failing to include information that they were required to provide to consumers in connection with their services.

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69. Each of the Defendants named in this Complaint has engaged, or participated, assisted, aided or abetted in a material way, or directed the failure to include the information required by section 12104, subdivision (m).

70. Defendants and their agents, employees and representatives will continue in their failure to include the information required by section 12104, subdivision (m), unless enjoined, and unless required to pay civil penalties.

PRAYER FOR RELIEF

WHEREFORE, The People of the State of California pray for judgment as follows:

1. For a preliminary and permanent injunction restraining and enjoining Defendants and all Does, and their officers, directors, successors in interest, controlling persons, agents, employees, attorneys in fact, and all other persons acting in concert or participating with them, or any of them, from directly or indirectly:

(a) Charging or receiving excessive fees and additional fees not authorized by statute, whether as part of the scheme complained of herein or otherwise, in violation of section 12104, subdivision (d);

(b) Failing to timely provide the information required in violation of section 12104, subdivisions (f), (i), (j) and (q);

(c) Falsely representing the fees charged to consumers were "voluntary contributions" and omitting the true nature of Defendants' fees, whether as a part of the scheme complained of herein or otherwise in violation of section 12104, subdivisions (l) and (n)(7);

(d) Making false statements about the Commissioner's Desist and Refrain Order, whether as part of the scheme complained of herein or otherwise in violation of section 12104, subdivision (l);

(e) Failing to provide the consumers the information required by section 12104, subdivision (m), whether as part of the scheme complained of herein or otherwise in violation of section 12104, subdivision (m);

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(f) Destroying, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, any books, records, documents, correspondence, brochures, manuals, or other documents of any kind, including those in electronic format, relating to prorating and bill paying in the possession, custody or control of any of the Defendants until further order of this Court.

2. For an Order of Final Judgment, pursuant to section 12105, requiring Defendants and all Does to disgorge to the affected consumers all fees, charges and amounts received directly or indirectly from California consumers for bill paying and prorating services.

3. For an Order of Final Judgment, pursuant to section 12105, requiring Defendants and all Does to pay civil penalties of up to $10,000 for each of 20,000 violations of the CSBPPL and the rules promulgated thereunder according to proof.

4. For an Order declaring Defendants' contracts wherein Defendants contracted for, received and made any charge in excess of the maximum permitted by the CSBPPL void pursuant to section 12316 and requiring Defendants to return to the consumers all charges received by Defendants.

5. For examination, audit and investigative costs, attorney's fees and related expenses as allowed by sections 12105 and 12106.

6. For such additional relief as may be requested hereafter and deemed proper by the Court.

Dated: June 1, 2007
San Francisco, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
JOAN E. KERST
Senior Corporations Counsel
Attorney for Plaintiff

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