

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

**ALYSSA POLACSEK, et al. individually, and on behalf  
of the classes of similarly situated persons, et al.**

**Plaintiffs,**

**vs.**

**Case No. 8:04-cv-00631PJM**

**DEBTICATED CONSUMER COUNSELING, INC., et al.**

**Defendants.**

**NOTICE OF CLASS ACTION AND PARTIAL CLASS ACTION SETTLEMENT  
TO THOSE WHO PAID MONEY IN “DONATIONS” OR FEES TO THE FOLLOWING CREDIT COUNSELING  
ENTITIES FROM JANUARY 31, 1998 TO OCTOBER 7, 2004:**

**DEBTICATED CONSUMER COUNSELING, INC.  
AMERIDEBT, INC.  
A BETTER WAY CREDIT COUNSELING, INC.  
CREDICURE, INC.  
MASON CREDIT COUNSELING, INC.  
NEXUM CREDIT COUNSELING, INC.  
NEWAY, INC.  
THE CREDIT NETWORK, INC.  
VISUAL CREDIT COUNSELING, INC.  
PRACTIVE, INC.  
DEBTSCAPE, INC.**

**This Notice may affect your rights. Please read it carefully.**

**I. THE CLASS ACTION LAWSUIT**

**A. DESCRIPTION OF THE CLAIMS BEING MADE AND THE HISTORY OF THE CASE**

On January 31, 2003, Plaintiff Alyssa Polacsek commenced a class action lawsuit in the United States District Court for the Central District of California against the following defendants: DEBTICATED CONSUMER COUNSELING, INC., A New York Not For Profit Corporation; INFINITY RESOURCES GROUP, INC., a Washington D.C. Corporation; DEBTWORKS INC., a Maryland Corporation (hereinafter referred to as “DebtWorks”); ERIKS PUKKE, a/k/a Eric Pukke; an individual; ANDRIS PUKKE, an individual; KENNETH DAM, solely in his capacity as Deputy Secretary of the Treasury Department, a department of the United States government; and CHARLES O. ROSSOTTI, solely in his capacity as Commissioner of Internal Revenue, a branch of the Treasury Department. Ms. Polacsek was joined in her claims by additional plaintiff class representatives, Sarah Leoni, Greg Cavataio and Felecia Robinson. These plaintiffs asserted similar claims, and also named THE BALLENGER GROUP, LLC (hereinafter referred to as “Ballenger”) and PAMELA PUKKE as defendants. The intervening plaintiffs also added claims under Maryland state laws relating to fraudulent conveyances by the defendants of assets.

In the lawsuit, plaintiffs’ federal law claim was for equitable relief and damages for violations of the federal Credit Repair Organizations Act (15 U.S.C. Section 1679, *et seq.*, (“CROA”)) against defendants Debticated, DebtWorks, the two Pukke defendants and Ballenger. This claim was made on behalf of all persons nationwide who paid money for credit counseling services from ostensibly non-profit tax exempt credit counseling agencies (“CCAs”) that Polacsek alleged were organized and controlled by the Pukke defendants.

Plaintiffs’ main contentions in the lawsuit are that supposedly non-profit tax-exempt CCAs were operating as fronts to bring debt management plan business into Andris Pukke’s for-profit business DebtWorks, Inc., and after January 1, 2003, into Ballenger. Polacsek contends that the CCAs did not operate as true non-profit 501(c)(3) organizations because their contracts with DebtWorks to manage consumers’ debt management plans generated private benefits or private inurement that violated the CCAs’ tax-exempt statuses. Moreover, without the tax-exempt status, the CCAs and DebtWorks violated the CROA by collecting fees in advance of rendering services, and by failing to provide required contract language and disclosures. Further, Polacsek contends that these organizations were formed as non-profit tax-exempt entities to avoid the CROA and that the donations that were solicited from consumers were obtained in violation of both federal and California law.

In addition to her federal law claims, Polacsek seeks damages for California residents under various California state law theories, including: (1) California’s Consumers Legal Remedies Act; (2) fraud; (3) negligent misrepresentation;

(4) California's Unfair Competition Law; (5) unjust enrichment; (6) breach of fiduciary duty; and seeks for the imposition of a constructive trust on the assets obtained by DebtWorks and Andris Pukke.

In addition to Debticated, the non-profit CCAs that contracted for DebtWorks' services were:

- (1) AmeriDebt, Inc.
- (2) A Better Way Credit Counseling, Inc.
- (3) Credicure, Inc.
- (4) Mason Credit Counseling, Inc.
- (5) Nexum Credit Counseling, Inc.
- (6) Neway, Inc.
- (7) The Credit Network, Inc.
- (8) Visual Credit Counseling, Inc.
- (9) Preactive, Inc.
- (10) Debtscape, Inc.

In late 2003, the United States District Court for the Central Division of California transferred the case to the United States District Court for the District of Maryland, Southern Division where the case now is pending. On November 3, 2004, the Honorable Peter J. Messitte of the United States District Court for the District of Maryland, Southern Division, certified national and California classes defined by whether consumers' debt management plans benefited defendant DebtWorks, with a sub-class for consumers whose accounts were with Debticated.

On May 25, 2005, the Court preliminarily approved a settlement between plaintiffs Leoni, Cavataio and Robinson and defendant Ballenger (the "Ballenger Settlement"). The Ballenger Settlement provides for a \$200,000 payment to an account for the benefit of the class members, which monies may be used to defray expenses of the class action. It defines, and the Court has preliminarily certified four subclasses of the previously certified classes to include persons whose DMP ("debt management plan") accounts were serviced by Ballenger (the "Ballenger Settlement Subclasses").

The defendants all deny the allegations made in the action and deny any and all liability with respect to the facts alleged. The Court has not yet decided whether plaintiffs or defendants are correct. This will be decided on pending motions or at the trial scheduled to commence on January 6, 2006.

## **B. CLASS COUNSEL**

The plaintiffs and the classes in this lawsuit are represented by (1) Michie Hamlett Lowry Rasmussen & Tweel PLLC, 500 Court Square, Suite 300, P.O. Box 298, Charlottesville, VA 22902-0298, Telephone: (434) 951-7213; Facsimile: (434) 951-7242, (2) Morris, Polich & Purdy LLP, 1055 West Seventh Street, 24<sup>th</sup> Floor, Los Angeles, California 90017, Telephone: (213) 891-9100; Facsimile: (213) 488-1178, and (3) Gregory S. Duncan, Esq., 412 East Jefferson Street, Charlottesville, VA 22902, Telephone: (434) 979-8556; Facsimile: (434) 979-9766.

## **C. THE CLASSES CERTIFIED BY THE COURT**

There will be one overarching national class consisting of all consumers who paid a non-profit 501(c)(3) fees between January 31, 1998 and October 7, 2004 for DMP processing services that were performed by DebtWorks or Ballenger. There will be a national subclass of consumers whose CCA was defendant Debticated. There will also be subclasses of the principal class for California residents whose fees for DMP processing services went indirectly to DebtWorks and Andris Pukke, and for Californians who used Debticated as their CCA. Finally, there will be a subclass of consumers whose DMP services were performed by Ballenger after January 1, 2003. Records available to the litigants indicate that you are a member of one or more of the certified classes based on the identity of your CCA, the dates your DMP began and ended, and your state of residency.

**The classes certified on November 3, 2004, as amended, are defined as follows:**

### **1. National Classes**

#### *a) DebtWorks National Class*

"The DebtWorks National Class shall be defined as including all consumers in the United States, who at any time after January 31, 1998 through October 7, 2004, were charged by an ostensibly non-profit credit counseling agency, any money or other valuable consideration whatsoever (whether denominated as a "voluntary contribution" or otherwise) in consideration of or relating in any way to the performance by DebtWorks or its assignees of any service for or on behalf of the non-profit credit counseling agency, including without limitation, debt consolidation or debt management plan services. The class shall be referred to as the "DebtWorks National Class" as this litigation proceeds."

#### *b) Debticated National Subclass*

"The Debticated National Subclass shall be defined as a subclass of the DebtWorks National Class including all consumers in the United States, from whom defendant Debticated Consumer Counseling, Inc. received at any time after January 31, 1998 through October 7, 2004, any money or other valuable consideration whatsoever (whether denominated as a "voluntary contribution" or otherwise), in consideration of or relating in any way to its

agreement to perform any service for the consumers, including without limitation, debt consolidation or debt management plan services. The subclass should be referred to as the “Debticated National Subclass” as this litigation proceeds.”

## **2. California Classes**

### *a) DebtWorks California Class*

“The DebtWorks California Subclass shall be defined as a subclass of the DebtWorks National Class including all California consumers, who at any time after January 31, 1998 through October 7, 2004, were charged by an ostensibly non-profit credit counseling agency, any money or other valuable consideration whatsoever (whether denominated as a “voluntary contribution” or otherwise) in consideration of or relating in any way to the performance by DebtWorks or its assignees of any service for or on behalf of the non-profit credit counseling agency, including without limitation debt consolidation or debt management plan services. In addition to the federal class claim asserted under the Credit Repair Organization Act (CROA), this class asserts certain California state law claims as class claims. The subclass shall be referred to as the “DebtWorks California Class” as this litigation proceeds.”

### *b) Debticated California Subclass*

“The Debticated California subclass, shall be defined as a subclass of the DebtWorks California Class, including all California consumers, from whom defendant Debticated Consumer Counseling, Inc. received at any time after January 31, 1998 through October 7, 2004, any money or other valuable consideration whatsoever (whether denominated as a “voluntary contribution” or otherwise) in consideration of or relating in any way to its agreement to perform any service for the consumers, including without limitation, debt consolidation or debt management plan services. In addition to the federal class claim asserted under the Credit Repair Organization Act (CROA), this class asserts certain California state law claims as class claims. The subclass shall be referred to as the “Debticated California Class” as this litigation proceeds.”

**The Ballenger settlement classes certified on May 25, 2005 are defined as follows:**

## **1. Ballenger National Subclasses**

### *a) Ballenger National Subclass*

“The Ballenger National Subclass shall be a subclass of the DebtWorks National Class and is defined as including all consumers in the United States, who at any time after January 1, 2003, and through October 7, 2004, paid an ostensibly non-profit credit counseling agency, directly or indirectly, any money or other valuable consideration whatsoever (whether denominated as a “voluntary contribution” or otherwise), in consideration of or relating in any way to the performance by The Ballenger Group, LLC, of any service for or on behalf of the non-profit credit counseling agency, including, without limitation, debt consolidation or debt management plan services. The subclass shall be referred to as the “Ballenger National Subclass” as this litigation proceeds.”

### *b) Debticated/Ballenger National Subclass*

“The Debticated/Ballenger National Subclass shall be a subclass of the Ballenger National Subclass and is defined as including all consumers in the United States, who at any time after January 1, 2003, and through October 7, 2004, paid Debticated Consumer Counseling, Inc., directly or indirectly, any money or other valuable consideration whatsoever (whether denominated as a “voluntary contribution” or otherwise), in consideration of or relating in any way to the performance by The Ballenger Group, LLC, of any service for or on behalf of Debticated, including, without limitation, debt consolidation or debt management plan services. The subclass shall be referred to as the “Debticated/Ballenger National Subclass” as this litigation proceeds.”

## **2. Ballenger California Classes**

### *a) Ballenger California Subclass*

“The Ballenger California Class, shall be a subclass of the Ballenger National Subclass, and is defined as including all California resident consumers, who at any time after January 1, 2003, and through October 7, 2004, paid an ostensibly non-profit credit counseling agency, directly or indirectly, any money or other valuable consideration whatsoever (whether denominated as a “voluntary contribution” or otherwise), in consideration of or relating in any way to the performance by The Ballenger Group, LLC, of any service for or on behalf of the non-profit credit counseling agency, including, without limitation, debt consolidation or debt management plan services. In addition to the federal class claim asserted under the Credit Repair Organization Act (CROA), this class asserts certain California state law claims as class claims. The subclass shall be referred to as the “Ballenger California Subclass” as this litigation proceeds and in any notice to class members.”

### *b) The Debticated/Ballenger Subclass*

“The Debticated/Ballenger California Subclass, shall be a subclass of the Ballenger California Subclass, and is defined including all California residents who at any time after January 1, 2003, and through October 7, 2004, paid Debticated Consumer Counseling, Inc., directly or indirectly, any money or other valuable consideration

whatsoever (whether denominated as a “voluntary contribution” or otherwise), in consideration of or relating in any way to the performance by The Ballenger Group, LLC, of any service for or on behalf of Debticated, including, without limitation, debt consolidation or debt management plan services. In addition to the federal class claim asserted under the Credit Repair Organization Act (CROA), this class asserts certain California state law claims as class claims. The subclass shall be referred to as the “Debticated/Ballenger California Subclass” as this litigation proceeds and in any notice to class members.”

## II. HOW DOES THIS AFFECT YOU?

### A. YOU ARE A CLASS MEMBER IF YOU PAID ANY FEE OR “VOLUNTARY CONTRIBUTION” TO ANY OF THE LISTED CCAS FOR SERVICES DURING THE CLASS PERIOD

If you fit within one or more of the class definitions (“Class[es]”), you will be considered a member of those Class(es) unless you specifically request to be excluded. In other words, **if you do nothing in response to this Notice, you will automatically be included in the case and will be bound by the result.**

**If your present address is different from the address at which we have contacted you, or if it will change in the future, make sure you leave a message or provide for mail forwarding and notify the Administrator at 1-888-385-3082.**

### B. IF YOU DO NOT WANT TO PARTICIPATE IN THE CLASS ACTION, YOU CAN EXCLUDE YOURSELF

If you do not want to participate in the class action (“Action”), you can exclude yourself by mailing a paper (1) stating you want to be EXCLUDED from the class and (2) listing your name, address, and telephone number. You must sign that paper and **mail it by First-Class mail, postmarked not later than July 29, 2005** addressed to Polacsek Class Administrator, P.O. Box 6177, Novato, CA 94948-6177. Any request to **exclude yourself from the case must be mailed by July 29, 2005.** Such a request should state your name and address and prominently state that you do not want to part of the Credit Counseling Class Action. If you exclude yourself from the Class, you (i) will not be permitted to participate in the Settlement described in this Notice, if it is approved; (ii) will not benefit from or be bound by a final judgment rendered in this Action; and (iii) may, if you wish, pursue on your own behalf whatever legal rights you may have. If you do not exclude yourself from the Class and the Settlement is approved, you will be bound by its terms and by any judgment entered as a result of the Settlement, and will be permanently enjoined from prosecuting any of the claims released in this matter at any time in the future. If you do not exclude yourself from the Class, you may, if you wish, enter an appearance by an attorney of your own choice, but no attorney may participate in the Hearing unless his or her appearance has been filed in this matter and served on counsel for the parties.

## III. WHAT HAPPENS NEXT?

### A. FAIRNESS HEARING

The next event in the Credit Counseling Class Action is the Court’s consideration of a preliminarily approved class settlement with Ballenger. **The Court has ordered that a final fairness hearing (the “Hearing”) be held on September 12, 2005** at 3:30 p.m. (or such other time as the Court may, without further notice, direct), in Courtroom 475-A, at the United States District Court for the District of Maryland, Greenbelt Division, located at 6500 Cherrywood Lane, Greenbelt Maryland, before the Honorable Peter J. Messitte, or any judge sitting in his place. The purpose of the Hearing will be to determine whether the proposed Settlement is fair, reasonable and adequate, as well as in the best interests of the Class. You do **not** need to appear at this Hearing unless you object to the Settlement. The Settlement is discussed below.

### B. CREDIT COUNSELING CLASS ACTION TRIAL

**A trial is currently scheduled in this case on January 6, 2006 for up to six weeks.** If you do not affirmatively exclude yourself from the case, then your claim will be included in pending motions and the trial. And, if the plaintiffs are successful, you may be entitled to a share of any monetary recovery. Until the trial is over, however, you may not receive any other communications about this case.

## IV. SUMMARY OF THE PROPOSED SETTLEMENT WITH THE BALLENGER GROUP, LLC

### A. THE CLAIMS AGAINST THE BALLENGER GROUP, LLC

The Plaintiffs have alleged that Ballenger is a successor-in-interest to DebtWorks, and that the fees it charged the CCAs for processing their clients’ DMPs caused the CCAs to violate the conditions of their non-profit and tax-exempt statuses by inuring to the benefit of private interests. They also allege that Ballenger therefore participated with the CCAs, DebtWorks and Andris Pukke in a course of business that was deceptive. They allege technical violations of the CROA such as the collection of fees in advance of rendering services, and failures to provide required contract language, disclosures and rights to withdraw required by the CROA. Finally, they allege violations of the same California laws that DebtWorks is alleged to have violated. Plaintiffs allege that they are entitled to a refund of the money paid to defendants that was not paid to Plaintiffs’ creditors.

While Ballenger has agreed to the terms of this Settlement, it denied and continues to deny liability on each and every claim asserted by the Plaintiffs. More specifically, it denies and continues to deny all charges of wrongdoing or liability,

on any theory, arising out of any conduct, statements, acts or omissions of defendants, their employees, agents or representatives, in connection with the Action.

The following is a summary of the principal terms of the proposed Settlement with defendant Ballenger. The full Settlement Agreement can be viewed at [www.PolacsekClass.com](http://www.PolacsekClass.com). The Settlement Agreement may be approved as modified by the Court without further notice.

#### **B. DESCRIPTION OF THE SETTLEMENT**

On May 25, 2005, the Court preliminarily approved a proposed conditional Settlement and provisionally certified the classes described above as a settlement Class[es] with respect to all claims against defendant Ballenger.

The parties have agreed that the Settlement will release Ballenger and certain of its past or present officers, members, agents, employees, independent contractors, and any of their successors, assigns, or legal representatives. The Settlement specifically excludes defendants Andris Pukke, Eriks Pukke, Pamela Pukke, Debticated Consumer Counseling, Inc. and DebtWorks.

**Pursuant to the Agreement, The Ballenger Group has agreed to pay the settlement classes a total of \$200,000 ("Settlement Proceeds"). No part of this sum will be immediately distributed to class members and no part of this sum will be immediately paid to Class Counsel as attorneys' fees.** Rather, subject to Court approval, the Settlement Proceeds will benefit the classes by defraying costs and expenses of duplicating, mailing and publishing this and other notices, and other costs incurred during the prosecution of this matter, which might otherwise be chargeable against any recovery. In the event that additional recoveries are made from defendants, and/or expenses of the litigation are otherwise paid, the Settlement Proceeds will be disbursed to the members of the classes as approved by the Court.

#### **C. EVALUATION BY CLASS COUNSEL**

Plaintiffs' counsel and counsel for the settling defendants have engaged in arm's length negotiations with respect to settlement of the claims against Ballenger. Class counsel consider that it will be substantially more difficult to establish Ballenger's liability than that of DebtWorks or Mr. Pukke, and believe that the presence of Ballenger at trial may be a significant distraction, especially in a complex proceeding such as this. Various attorneys general, the FTC (and another class action provisionally) also settled with Ballenger for comparable sums. Subject to the approval of the Court, the plaintiffs desire to settle the claims of the provisionally certified settlement classes against Ballenger. Based on their review of the facts and the law at this stage of the proceedings, and their evaluation of the immediate benefits which the proposed Settlement makes available, **Class Counsel believe that the terms of the Settlement are fair, reasonable and adequate, and that its approval is in the best interests of the provisionally certified settlement class.**

#### **D. THE FINAL APPROVAL HEARING**

**The Court has scheduled a final approval hearing with respect to the Settlement on September 12, 2005 at 3:30 p.m.** in Department 4c of the United States District Court for the District of Maryland, Greenbelt Division, located at 6500 Cherrywood Lane, Greenbelt Maryland. **The purpose of the hearing will be to determine whether the proposed Settlement is fair, reasonable and adequate,** as well as in the best interests of the provisionally certified settlement class. If it is so determined, the Settlement will be finally approved by the Court and a judgment will be entered dismissing the claims against Ballenger on the merits, with prejudice and without leave to amend as to the settling defendants. If the Court disapproves the proposed Settlement, then the action will continue and the rights and duties of the parties will be as if no settlement had been reached. **You do not need to appear at this hearing unless you object to the Settlement.**

#### **E. EFFECT OF SETTLEMENT APPROVAL**

##### **1. You will be deemed to have released the Ballenger Releasees.**

Unless you exclude yourself from the settlement class in the manner set forth below, and if the final approval order approving Settlement is entered by the Court, you shall be deemed to have given Ballenger, and, unless a current defendant in this action, its representatives, past and present officers, owners, directors, agents, employees, parents, subsidiaries, predecessors, affiliated business subdivisions and their respective estates, heirs, beneficiaries, successors, personal representatives, assignees and legal representatives ("the Ballenger Releasees") a release of any claims. You shall be deemed to have covenanted and agreed to refrain forever from instituting, maintaining, prosecuting or continuing to maintain or prosecute any suit or action, or collecting from or proceeding against Ballenger or the Ballenger Releasees and to release waive and forever discharge the following (the "Claims"):

- (1) Any claim or claims in law or equity arising under any federal or state laws between January 31, 1998 and May 6, 2005, based upon the facts alleged in the Amended Complaint in this case or any amendments or proposed amendments thereto or based upon the provision of credit counseling, credit repair, debt consolidation and/or debt management services to you, including but not limited to claims that the Ballenger Releasees:
  - (a) violated the CROA;
  - (b) aided and abetted violations of the CROA;
  - (c) are liable as successor-in-interest to, or an alter ego of, any Non-Settling Defendant (DebtWorks, Andris Pukke, Debticated, Eriks Pukke, Pamela Pukke, Infinity Resources Group, Inc).

(d) conspired with any other individual or entity with the purpose or effect of engaging in any of the activities described above.

- (2) With respect to the Claims described above, this covenant, waiver and release shall apply to any suits, debts, liens, contracts, agreements, promises, liability claims, demands, damages, losses, costs, expenses, or attorneys' fees of any nature whatsoever, known or unknown, fixed or contingent, suspected or claimed, which you ever had or now have against the Ballenger Releasees. You expressly waive the provisions of California Civil Code §1542 which reads as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

**2. Non-settling defendants will not be released. Any judgment against non-settling defendants will be reduced only by the Settlement Proceeds.**

DebtWorks, Andris Pukke, Debticated, Eriks Pukke, Pamela Pukke and Infinity Resources Group ("Non-Settling Defendants") will not be released as a consequence of the Settlement. However, any judgment against the Non-Settling Defendants will be reduced by the \$200,000 amount paid by Ballenger; the Non-Settling Defendants will be obligated to pay the remainder.

**F. YOU HAVE THE RIGHT TO OBJECT TO THE SETTLEMENT IF YOU CHOOSE TO DO SO**

Should any class member wish to appear at the approval hearing to object to the terms of the Settlement, they may do so. However, **class members who wish to object must first file a written objection with the Court by August 8, 2005**, and must serve the objection on the attorneys in the case.

Any objections to the Settlement should begin with the following statement: "I object to the proposed Settlement in Credit Counseling Class Action" and must state the factual and legal basis for the objection. All objections must also state the objector's name and address.

If you file a timely written objection and have not previously requested exclusion, you may appear at the hearing in person or through an attorney retained at your own expense. If you retain an attorney, your objection should so state and identify your attorney.

**If you wish to appear at the hearing to object to the Settlement, you must notify the court and counsel in writing of your intention to do so** with your written objection filed as described above.

**G. EXAMINATION OF PAPERS**

You may inspect the Complaint, and all of the other papers filed in this lawsuit at your cost by electronic means. The Court's web site is at <https://ecf.mdd.uscourts.gov/> Full instructions as to how to download pleadings from the federal courts are available at <http://pacer.psc.uscourts.gov/>

**H. ADDITIONAL INFORMATION**

If you have questions contact your own attorney or, if you would like more information about this Notice or this case, you may contact Class Counsel:

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**DO NOT CALL OR PERSONALLY CONTACT THE COURT  
ABOUT MATTERS SET FORTH IN THIS NOTICE.**