

UNITED STATES DISTRICT COURT FILED ENTERED
FOR THE DISTRICT OF MARYLAND LODGED RECEIVED
SOUTHERN DIVISION

JUN 20 2005

CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND DEPUTY

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

Plaintiffs,

v.

Case No. 8:04-cv-00631PJM

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

Defendants.

**SECOND AMENDED ORDER AND
APPROVAL OF AMENDMENT OF NOTICE PLAN**

Plaintiff Alyssa Polacsek, and Plaintiffs-in-Intervention, Sarah Leoni, Greg Cavataio and Felecia Robinson (“Plaintiffs”) have moved the Court pursuant to Rule 23(e) to modify their Notice Plan and the Court’s Amended Order (Docket # 306) preliminarily approving the settlement and Notice plan.

The said motions have been reviewed by the Court. Based thereon, the Court enters this second amended order, for the purposes of:

(a) Approving the Plaintiffs’ Amended Notice Plan. The Plaintiff’s Notice Plan shall be deemed amended by the substitution of the proposed text set forth in their June 16, 2005 motion for the original text of the Notice Plan.

(b) Paragraph 5b shall be amended to omit the reference to “objectors” in the paragraph.

In addition, the Court restates its prior ruling (Docket #306) as amended hereby:

- (1) Preliminarily approving the Settlement Agreement, subject to a final determination by the Court after notice to the class and the opportunity to object;
- (2) Conditionally certifying the Ballenger settlement classes as set forth below;
- (3) Defining the classes as set forth below; and

(4) Approving the notice plan and texts for the notice to the classes as submitted with the motion for preliminary approval of the Settlement Agreement filed by class counsel.

In preliminarily approving the Settlement Agreement, the Court finds as follows:

(1) That the Settlement Agreement is preliminarily determined to be fair, reasonable, and adequate; and

(2) That the manner of providing notice set forth in the Notice Plan as amended, including individual notice to most if not all of the members of the classes, and the texts of the summary (short form) notice and full (long form) notice provides the best notice practicable to members of the classes. Accordingly, it shall be and hereby is ORDERED:

1. The following Ballenger settlement classes are hereby conditionally certified pending the fairness hearing scheduled below:

1. Ballenger National Subclasses

a) Ballenger National Subclass:

“The Ballenger National Class 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 , 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/BallengerCalifornia 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.”

2. The Court shall hold the hearing required by Rule 23(e)(1)(C) on final approval of the settlement on September 12, 2005, at 3:30 PM to consider and finally determine:

(1) Whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate; and

(2) The number and identity of any persons wishing to be excluded from the settlement classes. All persons defined in section 1 above shall be included as members of the settlement classes unless such person files a paper (1) stating he or she wants to be excluded from the classes and (2) listing the persons name, address, and telephone number. The paper must be mailed by first-class mail, postmarked not later than July 29, 2005, to Rosenthal & Co., addressed to Polacsek Class Administrator, P.O. Box 6177, Novato, CA 94948-6177; and

(3) Any objections that are made to the Settlement Agreement, or any of its terms.

Any member of the settlement classes who objects to approval of the proposed settlement may appear at the final approval hearing in person or through counsel to show cause why the proposed Settlement Agreement should not be approved as fair, reasonable, and adequate.

However, no person (other than representatives of the named parties) may be heard at the final approval hearing, or file papers or briefs, unless on or before August 8, 2005, such person files and serves on counsel a timely written objection and notice of intent to appear, in accordance with this Court’s rules for filing pleadings. Any member of the settlement classes who does not make his or her objection to the settlement in the manner provided herein, shall be deemed to have waived such objection.

Plaintiffs’ brief in opposition to any objections that are filed and/or in support of final approval of the Settlement Agreement shall be due on August 25, 2005, 2005.

The final approval hearing described in this paragraph may be postponed, adjourned, or continued by order of the Court without further notice to the Plaintiff Settlement Class.

If the Settlement Agreement is finally approved, the Court shall enter a settlement order and judgment approving the Settlement Agreement. Said settlement order and judgment shall be fully binding with respect to all members of the settlement classes in accordance with the terms of the Settlement Agreement.

3. All discovery with respect to defendant The Ballenger Group and other pretrial proceedings in this action as to that defendant are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Settlement Agreement or this Order.

4. In the event that the proposed settlement is not approved by the Court, or entry of a settlement order and judgment does not occur for any reason, then the Settlement Agreement, all drafts of the same, and all orders entered by the Court in connection therewith shall become null and void to the extent necessary to put the parties in the same position as if no settlement had ever been agreed to or preliminarily approved. Further, no evidence relating to any settlement discussions (or to documents relating thereto) shall be admissible by any party in any subsequent proceedings in this case, including trial.

5. The dates of performance of the order are as follows:

a. Notice to the classes shall be completed according to the notice plan by no later than July 5, 2005.

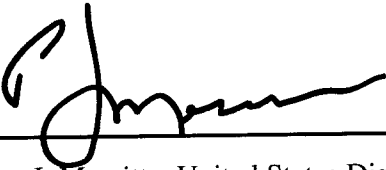
b. Requests for exclusion shall be deemed timely only if postmarked by July 19, 2005.

c. Objections to the settlement and notices of intention to appear at the final approval hearing shall be deemed timely only if filed with the Court by August 8, 2005.

c. Counsel for the settling parties shall file and serve papers in support of final approval of the settlement by August 25, 2005.

d. The final approval hearing shall be held on September 12, 2005 at 3:30 PM.

DATED: June ¹⁷__, 2005



Peter J. Messitte, United States District Judge