

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

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U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

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**FEDERAL TRADE COMMISSION** )  
600 Pennsylvania Avenue, Northwest )  
Washington, District of Columbia 20580 )

Plaintiff, )

v. )

**BALLENGER GROUP, LLC** )  
321 Ballenger Center Drive )  
Frederick, Maryland 21703 )  
Frederick County, and )

Civil Action No.:

**BALLENGER HOLDINGS, LLC** )  
321 Ballenger Center Drive )  
Frederick, Maryland 21703 )  
Frederick County )

Defendants. )

**STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND MONETARY SETTLEMENT**

Plaintiff Federal Trade Commission ("FTC") commenced this action concurrently with this Stipulated Judgment and Order by filing a Complaint for permanent injunctive and other equitable relief pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 53(b). The Complaint charges Defendants Ballenger Group, LLC, and Ballenger Holdings, LLC, with deceptive and unfair acts and practices in promoting and offering credit counseling and debt management plans in violation of Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

The FTC, and the Defendants, having been represented by counsel and acting by and through

such counsel, have consented to the entry of this Order by this Court to resolve all matters of dispute between the FTC and the Defendants without adjudication of any issue of fact or law and without the Defendants admitting liability for any of the matters alleged in the Complaint.

**NOW, THEREFORE**, on the joint motion of the FTC and the Defendants

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

#### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and of the parties. Venue in the District of Maryland is proper.
2. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
3. The FTC has the authority under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b) to seek the relief it has requested.
4. Defendants have waived service of the Summons and Complaint.
5. The activities of Defendants charged in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. Defendants enter into this Order freely and without coercion, and acknowledge that they understand the provisions of this Order and are prepared to abide by its terms.
7. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claims they may have against the FTC, its employees, representatives, or agents.
8. Defendants agree that this Order does not entitle Defendants to seek or to obtain attorneys' fees

as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub.L.104-121, 110 Stat. 847, 863-4 (1996). Defendants further waive any right to attorneys' fees that may arise under said provision of law.

9. This Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants that they engaged in violations of any law or regulation, or that the facts alleged in the Complaint, other than the jurisdictional facts, are true.
10. Entry of this Order is in the public interest.

#### **DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
2. "Defendants" means Ballenger Group, LLC, and Ballenger Holdings, LLC, whether acting directly or through any corporation, subsidiary, division, or other device.
3. "Assisting others" means providing assistance or support to any person or entity, including, but not limited to, providing any of the following goods or services: (a) formulating, drafting, providing, or arranging for the formulation, drafting, or provision of any marketing material; (b) providing names of, or assisting in the generation of, potential customers; (c) performing marketing services of any kind; (d) formulating, drafting, providing, or arranging for the formulation, drafting, or provision of any employee script; (e) providing any training or training materials; or (f) providing information, advice, consultation, or materials regarding business operations, processes, or practices.

4. "Credit counseling" means providing financial advice to a consumer about his finances or credit.
5. "Credit education" means providing general information or advice to a consumer about financial or credit matters.
6. "Debt management" means providing any service to a consumer relating to managing his debts.
7. "Debt management plan" or "DMP" means a program in which (1) a consumer pays one consolidated periodic payment to the program to cover the debts that are included in the program; and (2) the program disburses payments to the creditors of the debt.
8. "Debt management servicing" means providing services to a person or entity to assist with the management, processing, or support of debt management plans, including, but not limited to, negotiating the DMP with creditors and consumers, collecting and disbursing payments under the DMP, and providing customer service in connection with the DMP.
9. "Document" is synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or other non-identical copy is a separate document within the meaning of the term.
10. "Clear and conspicuous" means:
  - A. For print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

- B. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to comprehend it.
- C. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it.

The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

#### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that, in connection with the advertising, promoting, marketing, offering, selling, or distributing of any goods or services related to credit counseling, credit education, or debt management, Defendants, as well as their successors, assigns, officers, agents, servants, employees, or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from

making, or causing or assisting others to make, expressly or by implication, any false or misleading representations, including, but not limited to, misrepresenting:

- A. the existence, absence, terms, or amount of any fees, contributions, monies, or other costs, whether monetary or in kind, associated with the goods or services;
- B. that no profits are being made from the goods or services provided; and
- C. the terms, costs, other conditions, benefits of, or any other matter regarding the goods or services.

## II. MANDATORY DISCLOSURES

**IT IS FURTHER ORDERED** that in connection with the advertising, promoting, marketing, offering, selling or distributing of any goods or services related to credit counseling, credit education, or debt management, Defendants, as well as their successors, assigns, officers, agents, servants, employees, or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order through personal service or otherwise are hereby permanently restrained and enjoined from failing to disclose, in a clear and conspicuous manner, in any discussion of the costs required or requested to receive the goods or services including, but not limited to, mailings, electronic mailings, advertisements, oral discussions, contracts, or Web sites:

- A. that the consumer is required or requested to pay any fees, contributions, monies, or other costs, whether monetary or in kind, to anyone in order to receive the goods or services, if such is the case, and whether the payment is mandatory or voluntary;

- B. what effect the consumer's decision not to pay fees, contributions, monies, or other costs, whether monetary or in kind, has on the terms, other conditions, or benefits of the goods or services; and
- C. if such is the case, that any money paid by a consumer on a DMP will not be disbursed to creditors, regardless of whether the money is deemed a fee, a contribution, or otherwise, and the person to whom that money will be paid.

### **III. MONETARY RELIEF**

**IT IS FURTHER ORDERED** that judgment in the amount of seven hundred and fifty thousand dollars (\$750,000.00) is hereby entered against Defendants Ballenger Group and Ballenger Holdings, jointly and severally, which shall be paid as follows:

- A.
  - 1. Within ten (10) business days of the date of entry of this Order, Defendants shall pay the sum of two hundred and fifty thousand dollars (\$250,000.00) to the Commission; and
  - 2. Within thirty (30) days after the date that the payment in Part III.A.1 is due Defendants shall pay the additional sum of two hundred and fifty thousand dollars (\$250,000.00); and
  - 3. Within sixty (60) days after the date that the payment in Part III.A.1 is due Defendants shall pay the additional sum of two hundred and fifty thousand dollars (\$250,000.00); and
  - 4. All payments shall be made by wire transfer in accord with directions

provided by the Commission.

- B. Any and all funds paid pursuant to this Order shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices as alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants have no right to challenge the FTC's choice of remedies under this Subsection.
- C. Defendants further agree that the facts as alleged in the Complaint shall be taken as true in the event of any subsequent litigation to enforce this Order or to collect amounts due pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy proceeding.
- D. In the event of any default in payment that continues for ten (10) business days beyond the due date of payment, the entire unpaid amount together with interest, as computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment, shall immediately become due and payable.
- E. Notwithstanding any other provision of this Order, if the Defendants fail to meet the payment obligation set forth in Part III, the Defendants shall pay the costs and



attorneys' fees incurred by the FTC and its agents in any attempts to collect amounts due.

- F. All funds paid pursuant to this Order are equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment, or forfeiture.

#### **IV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that each Defendant within five (5) business days after receipt of this Order as entered by the Court, must submit to the FTC a truthful sworn statement acknowledging receipt of this Order.

#### **V. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order Defendants Ballenger Group, LLC, and Ballenger Holdings, LLC shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of this Order. Defendants Ballenger Group, LLC, and Ballenger Holdings, LLC shall deliver this Order to current personnel within thirty (30) days of the Entry of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

#### **VI. RECORDKEEPING REQUIREMENT**

**IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of this

Order, in connection with any business related to credit counseling, credit education, or debt management, Defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Copies of all manuals, sales scripts, training materials, advertisements, or other marketing materials;
- B. Records accurately reflecting: the name, address, and phone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date on which the person commenced work; and the date and reasons for his or her termination, if applicable;
- C. Records accurately reflecting: the number of consumers to whom Defendants provided any good or service; and the number of consumers who paid fees, contributions, monies, or other costs, whether monetary or in kind, to anyone in order to obtain the good or service, and the amount of each such payment;
- D. Customer files containing the names, addresses, phone numbers, dollar amounts paid to creditors, and dollar amounts paid to any other person, to the extent such information is obtained in the ordinary course of business; and
- E. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests.

## VII. COMPLIANCE REPORTING

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order, Defendants shall notify the FTC of any changes in corporate structure that may affect compliance obligations arising under this Order, including, but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation, or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in corporate name or address, at least thirty (30) days prior to such change, **provided that**, with respect to any proposed change in the corporation about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the FTC as soon as is practicable after obtaining such knowledge.
- B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendants have complied and are complying with this Order. The report shall include, but not be limited to:
1. any changes required to be reported by Subparagraph A above;
  2. a copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Part V of this Order; and
  3. a copy of any printed disclosures given to consumers or potential consumers and

scripts used by employees for conversations with consumers or potential consumers.

- C. For purpose of the compliance reporting required by this Part, the FTC is authorized to communicate directly with Defendants.

### **VIII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for purposes of monitoring and investigating compliance with any provision of this Order:

- A. Within fifteen (15) business days of receipt of written notice from a representative of the FTC, Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation; **provided that** the Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed.R.Civ.P. 26(c).
- B. In addition, the FTC is authorized to monitor compliance with this Order by all lawful means, including, but not limited to, the following:
1. obtaining discovery from any person, without further leave of Court, using procedures prescribed in Fed.R.Civ.P. 30, 31, 33, 34, 36, and 45; and
  2. posing as consumers to (1) the Defendants, (2) the Defendants' employees, or (3) any other entity owned, managed, or controlled in whole or in by

any of the Defendants, without the necessity of identification or prior notice;

**Provided that** nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.

§§ 49 and 57b-1, to obtain documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

- C. Defendants shall permit representatives of the FTC to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

#### **IX. TAXPAYER IDENTIFICATION NUMBERS**

**IT IS FURTHER ORDERED** that the Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their respective taxpayer identification numbers (social security number or employer identification number), which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of the relationship of the Defendants and with the government.

#### **X. NOTIFICATIONS**

**IT IS FURTHER ORDERED** that, for purposes of this Order, Defendants shall, unless otherwise directed by the FTC or its authorized representatives, mail all written notifications to the FTC to:

Associate Director, Division of Financial Practices  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580  
Re: FTC v. Ballenger Group, et al.

**XII. COSTS AND ATTORNEYS FEES**

**IT IS FURTHER ORDERED** that all parties to this Order will bear their own costs and attorneys fees incurred in connection with this action.

**XIII. SCOPE OF ORDER**

This Order resolves only claims against the named Defendants and their employees, officers, and directors, and it does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants, and persons or entities in any type of indemnification or contractual relationship with Defendants.

**XIV. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

**IT IS SO ORDERED.**

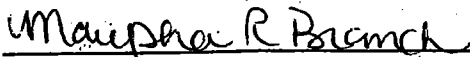
Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

The parties hereby stipulate and agree to the terms and conditions set forth above and consent to entry of this Stipulated Final Judgment and Order.

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

WILLIAM E. KOVACIC  
General Counsel




Jeanne-Marie S. Burke  
Maïysha R. Branch  
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ATTORNEYS FOR PLAINTIFF  
FEDERAL TRADE COMMISSION

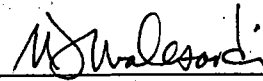


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(202) 326-2215 (telephone)  
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FOR THE DEFENDANTS:


  
\_\_\_\_\_  
BALLENGER GROUP, LLC  
By George Fortuna, Chief Executive Officer

Dated: 11/17/03

  
\_\_\_\_\_  
BALLENGER HOLDINGS, LLC  
By Michael Malesardi, Chief Financial Officer

Dated: 11/17/03

Approved as to Form:

  
\_\_\_\_\_  
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Ballenger Holdings, LLC

Dated: 11/17/03